

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA

vs.

CR-11-1013-TUC-RCC

GHERMON LATEKE TUCKER, et al.,

Defendants.

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August 14, 2012  
Tucson, Arizona

JURY TRIAL

DAY FIVE

BEFORE THE HONORABLE RANER C. COLLINS  
UNITED STATES DISTRICT JUDGE

Court Reporter: Erica R. Grund, RDR, CRR  
Official Court Reporter  
405 W. Congress Street  
Tucson, Arizona 85701

Proceedings prepared by computerized realtime  
translation

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1 P R O C E E D I N G S

2 (The jury enters the courtroom.)

3 THE COURT: Let the record reflect the  
4 jurors returned back to the courtroom, the presence  
5 of all counsel and the defendants.

6 Good morning. It is 9:45. You all were  
7 ready to go, as were we.

8 Ms. Hopkins indicated she had no further  
9 questions, so Mr. Cooper will get us started.

10 MR. COOPER: Thank you, Your Honor.

11 MICHAEL J. SHARKEY, WITNESS, PREVIOUSLY SWORN

12 CROSS-EXAMINATION

13 BY MR. COOPER:

14 Q. Good morning.

15 A. Good morning, sir.

16 Q. I'd like to discuss with you a little bit  
17 about surveillance and about specifically March the  
18 2nd.

19 I think you indicated yesterday you've been an  
20 FBI agent 21 years?

21 A. Yes, sir.

22 Q. And how many of those years have been as a  
23 surveillance agent?

24 A. Six years.

25 Q. Okay. So the past six years?

1 A. The past six years, yes. That's correct.

2 Q. Okay. And much of that in Tucson?

3 A. Yes.

4 Q. So you know Tucson pretty well?

5 A. I do know Tucson pretty well.

6 Q. And as a surveillance agent, I assume that you  
7 work cases all over the town; is that fair?

8 A. Yes. That's fair to say.

9 Q. Okay. Prior to March 2nd of 2011, did you  
10 know anything about this investigation or this  
11 case?

12 A. I was briefed on it the night prior by our  
13 team leader.

14 Q. Okay. That's what I was going to ask you  
15 about.

16 And your team leader was?

17 A. Kent Hush, Agent Kent Hush.

18 Q. All right. And the briefing would have been  
19 the evening of March 1st?

20 A. I believe it was on the afternoon, maybe  
21 midday or afternoon.

22 Q. All right.

23 A. March 1st.

24 Q. And how many people were present at the  
25 briefing?

1 A. I'm not sure. I don't recall.

2 Q. Do you have in front of you your surveillance  
3 log?

4 A. Yes.

5 Q. Could you go ahead and get it out? I'm going  
6 to refer to it quite a bit, so I'd like to have you  
7 be able to look at it.

8 A. Okay. I do have it in front of me.

9 Q. All right. At the top of the log is a section  
10 devoted to who basically the author is, and that  
11 would be Jorge Fernandez?

12 A. That's correct.

13 Q. Okay. And Agent Fernandez was not on your  
14 team; is that right?

15 A. Yes, he is on my team.

16 Q. He is on your team?

17 A. Yes, sir.

18 Q. But he's not the team leader?

19 A. No, he's not the team leader.

20 Q. Okay. But he was designated to be the person  
21 who would be the log holder?

22 A. Yeah, yeah. He was assigned the log that day.

23 Q. Okay. And Agent Hush was the team leader?

24 A. That's correct.

25 Q. And how many on your team?

1 A. At that time, there was changes. It was  
2 myself, Agent Klawenn, Agent Howell, and Agent  
3 Fernandez. That's it.

4 Q. And how many surveillance teams are there in  
5 Tucson?

6 A. There are two teams.

7 Q. Two teams. Okay. Under the section listed  
8 "Surveillance Agents," it lists 12 different  
9 agents?

10 A. That's correct.

11 Q. But it does not list Agent Hush.

12 A. That's because Agent Hush wasn't involved in  
13 the active surveillance, which this log is  
14 written --

15 Q. Just for the people that are actually watching  
16 what's going on?

17 A. Right. The people making observations are the  
18 people listed. Agent Hush was assigned on March  
19 2nd at the command post, and he was communicating  
20 with us via the radio.

21 Q. Okay. So he's on the radio while you all are  
22 out watching what's going on?

23 A. That's correct.

24 Q. And he would -- who was giving directions as  
25 to what -- what you were to do, Hush or anybody

1 else?

2 A. Hush or the other team leader that was out  
3 there that day was Agent Kim Stoddard. She's the  
4 team leader for our Phoenix team.

5 Q. All right.

6 A. And they were also involved in this operation.

7 Q. All right. And to the right of the names is a  
8 number; right?

9 A. That's correct.

10 Q. Okay. And you are listed as No. 30?

11 A. That's correct.

12 Q. And before you go out there, you memorize who  
13 all the other numbers are so you know where these  
14 persons are when they talk?

15 A. Yeah. We refer to each other by number on the  
16 radio.

17 Q. All right. And the briefing indicated to you  
18 that there would be primarily three different  
19 locations you were going to be watching; right?

20 A. Yes.

21 Q. And those are the ones that are listed below  
22 the surveillance agents?

23 A. Well, let me correct that. There were two  
24 locations we had planned. The third location on  
25 the -- on the surveillance log was a location we



1 ended up going to, but we didn't know that prior  
2 to, you know, the day of the surveillance.

3 Q. Okay. That was my next question is, the Food  
4 City and the warehouse you actually knew you were  
5 going to be watching at some point?

6 A. That's correct.

7 Q. And during surveillance, you're not locked  
8 into a location necessarily; right?

9 A. Well, not as the surveillance is moving. It  
10 depends on how the targets are moving. But when we  
11 started that morning, I was assigned to the Food  
12 City location.

13 Q. Does that mean you have to stay there?

14 A. Until I'm directed otherwise, yes.

15 Q. And so you were waiting for Hush, I guess, or  
16 whoever's at the -- what do they call it?

17 A. At the command post.

18 Q. -- command post to tell you; right?

19 A. That's correct.

20 Q. Okay. At the briefing, were you told to be  
21 looking for a specific type of car?

22 A. Yes.

23 Q. And just one car you were told about?

24 A. Just one car.

25 Q. And that would be the Murano; right?

1 A. That's correct.

2 Q. And on the surveillance log, there's six cars  
3 listed; right?

4 A. Yes, there's six.

5 Q. And the five cars besides the Murano are cars  
6 that you came upon during the course of the morning  
7 and afternoon of the 2nd; right?

8 A. That is correct.

9 Q. All right. Let me ask you about the Food City  
10 itself and the location. It's in -- getting toward  
11 the South Tucson area of the metro Tucson area;  
12 correct?

13 You know where the city of Tucson --

14 A. I think it's in the actual city of South  
15 Tucson, if that's what you mean.

16 Q. Well, yeah. I was asking, how close is it to  
17 South Tucson?

18 A. It might be within the city limits. I'm not  
19 sure.

20 Q. But at least it's very close to South Tucson?

21 A. Right.

22 Q. Is that fair?

23 A. Yes.

24 Q. Okay. And when you prepare to do a  
25 surveillance of a place like that, do you drive

1 around and look for the best places where you can  
2 be parked so that you wouldn't be noticed and have  
3 the best view?

4 A. That's correct.

5 Q. Okay. And when was that done?

6 A. Prior to us -- well, probably around 8:40,  
7 when we initiated, we'll do a quick survey of the  
8 area and choose a location that we feel was  
9 somewhat excluded.

10 Q. Okay. How many entrances and exits were there  
11 at the Food City?

12 A. There were two.

13 Q. And if you could describe -- I think you said  
14 you were located on the north side; is that right?

15 A. Yes, that's correct.

16 Q. Near the north exit?

17 A. Near the north exit.

18 Q. And where was the other exit? Was it south  
19 or --

20 A. East onto Sixth Avenue.

21 Q. Onto Sixth Avenue. And then the freeway  
22 buttresses one side?

23 A. The freeway -- there may be a business right  
24 along the south side of the Food City lot, but  
25 south of that is the onramp for I-10. There's no

1 entrance on the I-10 from the south side of the  
2 parking lot.

3 Q. So for anybody to get into the Food City  
4 parking lot, they'd have one of two choices; right?

5 A. Right.

6 Q. Okay. And you were near one of those choices?

7 A. That's correct.

8 Q. And from your view -- I guess when you started  
9 at 8:30, 8:40 in the morning, the parking lot  
10 wasn't very full; right?

11 A. It was not full. I don't recall how many  
12 cars, but I don't recall it being packed or --

13 Q. But you had a good vantage of the parking lot  
14 from where you were at 8:30 or 8:40.

15 A. I had a partial view of the parking lot  
16 because there are businesses that are along the  
17 north side of the parking lot, so I couldn't see  
18 into the west very -- western edge of the parking  
19 lot. Like, in other words, close to the front of  
20 the Food City I couldn't see. My view was  
21 obstructed to that area there.

22 Q. On the other side, there were how many other  
23 agents watching the parking lot?

24 A. There was one other agent.

25 Q. And that was?

1 A. Agent Fernandez.

2 Q. Agent Fernandez?

3 A. That's correct.

4 Q. Okay. And he got there 8:40 as well?

5 A. That's correct.

6 Q. So all the other 12 people, the agents that  
7 are listed here, were assigned other places besides  
8 Food City?

9 A. Yes, initially they were.

10 Q. That would be Sharman, for instance, or  
11 Howell, all of them?

12 A. Yes. They were assigned to locations north of  
13 Tucson.

14 Q. That would be the I-10; right?

15 A. Well, I believe there was some surveillance  
16 that was taking place in the city of Phoenix,  
17 initially.

18 Q. Okay.

19 A. By the --

20 Q. That's on March 2nd you're talking about?

21 A. Yes. And then there was another location that  
22 was staffed by our personnel. The remainder of our  
23 team plus parts of Phoenix's team that was I-10  
24 between Phoenix and Tucson.

25 Q. And there were airplanes up there; right?

1 A. There were. There was two airplanes, but only  
2 one was flying at any given moment.

3 Q. One was -- only one was flying at any given  
4 moment?

5 A. Yeah, I believe they -- one airplane did the  
6 initial part of the surveillance. Then it was  
7 handed off to another airplane and then handed back  
8 to the other airplane.

9 Q. Did both airplanes have cameras, do you know?

10 A. No, I believe only one airplane has cameras.

11 Q. Who is Alex Jones?

12 A. Alex Jones is a pilot from Phoenix.

13 Q. And he's listed at 11:45 as No. 18; right?

14 A. What do you mean 11:45.

15 Q. 11:45 a.m. time wise under the observation  
16 section?

17 A. Oh, yes. Let me see. Alex -- yeah, I can't  
18 tell you if whether he was on the ground or the air  
19 that day at 11:45. I don't know. He does both.

20 Q. Okay.

21 A. He's on the air and ground.

22 Q. But at least at 11:45 there is a notation that  
23 he had -- and you --

24 A. Oh, okay. That's right. Yeah. He must have  
25 been then flying the first part of the shift, if

1 he's on there, so he was -- he was flying.

2 Q. And Jones is located in Tucson; right?

3 A. Jones is an agent assigned to the Phoenix  
4 team.

5 Q. Phoenix, but an Arizona agent?

6 A. Yes.

7 Q. Not from Texas?

8 A. Texas, no.

9 Q. Okay. Did you know of any Texas agents who  
10 were present that day?

11 A. I believe the other aircraft that was utilized  
12 that had the camera was out of Houston.

13 Q. And the names -- you don't know names of those  
14 people, do you?

15 A. No.

16 Q. You know all the names listed as surveillance  
17 agents though?

18 A. The names listed on this surveillance log,  
19 these people I know.

20 Q. Okay. So at 11:45, you're told by both  
21 Fernandez and Jones that the Murano has shown up at  
22 Food City; correct?

23 A. That's correct.

24 Q. Okay. Let me ask you about waiting time. You  
25 got there about 8:40, and so you basically just sat

1    there for three hours waiting for something to  
2    happen?

3    A.   That's correct.

4    Q.   Okay.  There's an indication that, after it  
5    had been there for a period of time, the -- it  
6    looks like maybe 35, 40 minutes, the Murano then  
7    left the Food City.

8           That indication is given by Fernandez; right?

9    A.   That's correct.

10   Q.   Were you told to follow the Murano?

11   A.   I was assigned to follow any activity that was  
12   going on at the Food City.  If it did depart, yes,  
13   I was assigned to follow that vehicle.

14   Q.   Okay.  So when you left the Food City at -- it  
15   looks like you would have left at 12:34, right?

16   A.   Yes.  I left behind the Murano, as it departed  
17   northbound on Sixth Avenue.  I left my position,  
18   waited to hear which way it turned onto Sixth  
19   Avenue before I even approached Sixth Avenue, and  
20   then I heard on the radio that it went north, so I  
21   pulled up and pulled in behind it, quite a distance  
22   behind it, not right behind it.

23   Q.   Did you follow the Murano to where it was  
24   going?

25   A.   I followed, yes.  As it was going north, I



1 followed behind it.

2 Q. Because if you'd look at page 2, if you look  
3 at the bottom of page 2, where it talks about --  
4 this is your describing the vehicle heading  
5 northbound on Sixth Avenue at 12:41.

6 See that?

7 A. At 12:41, it's -- it was -- it already had  
8 done a u-turn. It left the parking lot, went  
9 northbound, did a u-turn, then went southbound past  
10 the Food City, did another u-turn. At 12:41 it  
11 does a second U-turn.

12 Q. I guess what I'm asking you is, at 12:44,  
13 Agent Fernandez is saying the Murano comes back to  
14 Food City; right?

15 A. Right.

16 Q. So it didn't go to the warehouse in that trip;  
17 right?

18 A. No, and that's -- that short time frame there  
19 it just drove up and down Sixth and did two u-turns  
20 and then returned to the --

21 Q. Right. That's what I wanted to clarify.

22 A. Yes.

23 Q. And so you then returned to where you were,  
24 which is at Food City watching; right?

25 A. Yeah, back to the north, covering that north

1 exit.

2 Q. North exit. All right.

3 And it appears, though, that you then were  
4 watching, and the Murano was the only vehicle at  
5 that time, from 12:44 up through 1:36, that you  
6 were able to see that had anything you thought to  
7 do with the case; right?

8 A. That is correct.

9 Q. And in fact, you document that the Murano at  
10 one point drove -- when you say repositioned, that  
11 means they drove around the parking lot and got  
12 parked in another spot; right?

13 A. Well, I don't know. That's what Agent  
14 Fernandez reported seeing.

15 Q. 31 is Fernandez. I'm sorry.

16 A. Yeah.

17 Q. You're 30?

18 A. Right.

19 Q. Okay. Did you see that? Do you remember --

20 A. No.

21 Q. Okay. That's Fernandez reporting that --  
22 "reposition" means change spots?

23 A. That's correct.

24 Q. All right. He does write that, at 1:35, the  
25 Murano circles the parking lot; right?

1 A. That's correct.

2 Q. Did you see that?

3 A. No.

4 Q. But you're sitting there; right?

5 A. I'm sitting a distance away, north of the Food  
6 City.

7 Q. Okay. And you had a camera with you; right?

8 A. Yes.

9 Q. Binoculars?

10 A. Yes.

11 Q. Okay. The first vehicle that you, other than  
12 the Murano, that you noticed that arrived in the  
13 parking lot was at 1:36 p.m.; right?

14 A. I didn't notice it. Agent Fernandez --

15 Q. I'm sorry. An agent noticed.

16 A. An agent noticed.

17 Q. Okay. That would be a gold Chevy Optra?

18 A. That's correct.

19 Q. Did you know anything about the Chevy Optra or  
20 who was driving it, anything like that?

21 A. No.

22 Q. So you weren't told to watch out for a Chevy  
23 Optra the day before?

24 A. No, but I do recall over the radio from the  
25 command post that there was some talk about

1 watching for a gold Chevy Optra.

2 Q. Do you know why?

3 A. No.

4 Q. So you don't know who this unknown Hispanic  
5 male that's being described by Fernandez is who  
6 gets out of the -- who's driving the Optra?

7 A. No.

8 Q. All right. It appears from what Fernandez is  
9 writing that an unknown Hispanic man gets out of  
10 the Murano and gets into -- it looks like Vehicle  
11 2, which is the Optra; right? That's at 1:38.

12 A. What he's written at 1:37 --

13 Q. 1:37, I'm sorry, the Hispanic male gets out of  
14 the Murano and gets into the Optra.

15 A. That's correct.

16 Q. And you're being given that information over  
17 the radio?

18 A. That's correct.

19 Q. But you don't know why this is happening;  
20 right?

21 A. No.

22 Q. And you also get told that a short time later  
23 another -- well, that the Murano leaves the Food  
24 City; right?

25 A. That's correct.

1 Q. At that point you leave Food City as well;  
2 right?

3 A. Well, not only the Murano left. The Optra  
4 left as well.

5 Q. Okay. And you follow both the vehicles to  
6 where they're going?

7 A. That's correct.

8 Q. And it looks like you are with Klawenn  
9 following as well?

10 A. Yes. Agent Klawenn then joined the  
11 surveillance. He was assigned further north and  
12 made his way down to us.

13 Q. And you went to the warehouse, and at least  
14 three different men got out of the -- got out of  
15 the vehicles and go inside the warehouse; right?

16 A. I didn't see that.

17 Q. I know, but -- well, it's -- you're listed as  
18 having said that.

19 A. Right.

20 Q. So that would be Klawenn who said it?

21 A. Well, I -- the last I saw of those vehicles is  
22 when they turned onto the street leading to 46th  
23 street from Ajo.

24 Q. Okay.

25 A. I didn't go into the warehouse area because we

1 had agents assigned to that area there.

2 Q. All right.

3 A. And they weren't surveillance agents. They  
4 were other agents.

5 So my duties were to wait, and if any of the  
6 vehicles came back out, to go ahead and reinitiate  
7 surveillance on the vehicles coming back out.

8 Q. Well, maybe I'm missing something and you can  
9 clarify. At 1:51, it indicates that these fellows  
10 get out of the vehicles and go inside the  
11 warehouse; right?

12 A. That's correct.

13 Q. Okay. And it indicates that the agents who  
14 are observing that are Agent 30 and Agent 35. That  
15 would be you and Klawenn?

16 A. Well, maybe Agent Klawenn did. I was about a  
17 block away from the warehouse.

18 Q. All right.

19 A. I didn't see anybody get out.

20 Q. But at the very least you're getting that  
21 information?

22 A. Right.

23 Q. Okay. And then six minutes later, it leaves  
24 the warehouse, and you again pick up the tail and  
25 head back to Food City; right?

1 A. That's correct.

2 Q. Okay. And it arrives at Food City at -- it  
3 looks like 2:04 and goes into the parking lot;  
4 right?

5 A. Yes.

6 Q. And you're informed that it picks up an  
7 unknown male who's standing in front of the store;  
8 right?

9 A. I'm informed of that by Agent Fernandez, yes,  
10 correct.

11 Q. All right. And this male is designated as  
12 M-4, right, at 2:04?

13 A. Right. Picks up an unknown male M-4, that's  
14 correct.

15 Q. You don't know what has happened to Male 1 and  
16 Male 3 though?

17 A. No.

18 Q. Okay. They could -- for all you know, they're  
19 back at the warehouse.

20 A. They could be. I don't know.

21 Q. Or they could be in the Murano.

22 A. Or they could be in the Murano, yes, sir.

23 Q. Okay. The Murano only stays another minute  
24 and picks up M-5 and M-6, two more men; right?

25 A. Right.

1 Q. Okay. If you could, would you look under  
2 "Individuals Observed." M-1 through M-6 are all  
3 Hispanic males; correct?

4 A. Yes.

5 Q. Okay. So everybody we've talked about so far,  
6 and we're now at about 2:05 p.m., are Hispanic  
7 males dealing with the Murano and the Optra; right?

8 A. Yes.

9 Q. All right. The Murano then leaves at 2:06;  
10 right?

11 A. That's correct.

12 Q. And you leave with it; right?

13 A. Yes. I follow behind as it departed again, a  
14 distance behind.

15 Q. And once again, we get to I think 2:15, and  
16 that's when, at the warehouse, four men leave the  
17 Murano and go inside; right?

18 A. That's what's written in the log. I didn't  
19 see that, but --

20 Q. All I'm asking is about what's in the log.

21 A. Yes, that's what's in the log.

22 Q. And again, you didn't see it because you're  
23 located --

24 A. Again, I stayed about a block away from that  
25 area.



1 Q. There are agents surrounding the warehouse,  
2 watching it?

3 A. Right.

4 Q. Do you know where the airplane is at this  
5 point?

6 A. Overhead.

7 Q. Watching the warehouse or Food City?

8 A. They would be at the warehouse with us.

9 Q. And why is that?

10 A. Because that's the target that was moving at  
11 that time.

12 Q. Okay. And the target being the Murano?

13 A. Right.

14 Q. Okay. The next thing that happens, it  
15 appears, is that there's a notation about Food  
16 City, and that notation is apparently delivered by  
17 Agent Sharman, correct, at 2:19?

18 A. Yes.

19 Q. When Sharman delivers this at 2:19, this  
20 statement, had you stayed at the warehouse?

21 A. Yes, I was -- I was sitting near the  
22 warehouse.

23 Q. A block away?

24 A. Uh-huh.

25 Q. Okay. But you're hearing what Sharman is

1 saying; right?

2 A. That's correct.

3 Q. And if you look at the log, he's now  
4 indicating he sees 11 black men in three different  
5 cars.

6 A. Okay.

7 Q. Is that fair?

8 A. Let me see. I'll count here. Let's see. He  
9 sees four male black occupants in the red Ford  
10 Expedition.

11 Q. All right.

12 A. And five male black occupants in the Cadillac  
13 Escalade, and then two black males in the gold  
14 Buick LeSabre.

15 Q. That's 11.

16 A. Okay.

17 Q. Okay. And my question then is, you were  
18 observing, along with Fernandez and I guess  
19 Klawenn, Food City leaving at about 2:06 p.m.;  
20 right?

21 A. Say that again. I'm sorry.

22 Q. You were at Food City observing the parking  
23 lot, along with Fernandez and Klawenn, up until  
24 about 2:06 p.m.

25 A. 2:06, right.

1 Q. And at that point you left; right?

2 A. Right.

3 Q. And when you left, there was no indication of  
4 any black males in these cars at Food City; right?

5 A. That's correct.

6 Q. Okay. And the first indication that you have  
7 about these vehicles being involved in this case  
8 whatsoever is at 2:19, when you get this  
9 information over the radio?

10 A. That's correct.

11 Q. Okay. Was somebody -- and tell me how this  
12 works. Was somebody specifically assigned to  
13 remain at Food City, then, throughout to watch the  
14 Food City?

15 A. No. That was decisions that were being made  
16 at the command post, and the direction was being  
17 given to people, and I don't know who directed  
18 Agent Sharman to go to the Food City, but he may  
19 know that.

20 Q. Okay. Do you know when Sharman arrived at  
21 Food City?

22 A. No.

23 Q. And there is really no way of telling that  
24 from the surveillance log?

25 A. Not from the log, no.

1 Q. Okay. You were present at the warehouse when  
2 people were arrested there, or at least a block  
3 away; right?

4 A. Yes.

5 Q. And that arrest took place at about 2:20 , is  
6 that fair?

7 A. I'm not sure. Somewhere between, I would  
8 say -- yeah, I'm not sure when they actually --

9 Q. That's not indicated on the log?

10 A. No.

11 Q. Okay. The next time you are indicated here is  
12 at 2:40 p.m.; right?

13 A. Yes. The next time communicated is 2:47, or  
14 2:40, correct.

15 Q. 2:40.

16 A. Yeah.

17 Q. And that's at the Circle K?

18 A. That's correct.

19 Q. Did you ever go back to the Food City?

20 A. No.

21 Q. You left the warehouse, and who directed you  
22 where to go?

23 A. Kent Hush, Agent Hush.

24 Q. And he told you to go to the Circle K?

25 A. He told me to assist in now new targets being

1 designated for surveillance, and he instructed me  
2 to assist with those new targets.

3 Q. And that would be the Escalade --

4 A. The Escalade and the red Ford Explorer.

5 Q. And were you hearing who was supposed to  
6 assist in targeting the Buick LeSabre?

7 A. No.

8 Q. Is there any indication in the logs as to who  
9 followed or who did anything with the Buick  
10 LeSabre?

11 A. No. I believe that's one we missed.

12 Q. Okay. There is at least a partial license  
13 plate for the LeSabre; correct?

14 A. That's correct.

15 Q. With I think six of the seven digits?

16 A. Right.

17 Q. Okay.

18 A. I had a report of that being what I would term  
19 in play, like, a target.

20 Q. Right.

21 A. But I never saw it.

22 Q. You never saw the LeSabre; right?

23 A. No.

24 Q. That's because the LeSabre was at the Food  
25 City.

1 A. Okay.

2 Q. Okay. And you were not at the Food City when  
3 it was there?

4 A. No.

5 Q. Okay. You get to the Circle K, and one of the  
6 -- one of the jobs that you had at the Circle K was  
7 to take pictures; right?

8 A. I was not assigned that job. I mean, we are  
9 always going to be taking pictures, if we are given  
10 the opportunity.

11 Q. Okay. Maybe I should --

12 A. And I saw an opportunity and so I took  
13 pictures.

14 Q. I should put it a different way. While you're  
15 at the Circle K, you were taking pictures; right?

16 A. That is correct.

17 Q. And one of the things that you described at  
18 the Circle K is that you saw a Jeep Commander;  
19 right?

20 A. Yes.

21 Q. Prior to 2:47, you had not been told to be  
22 looking for a Jeep Commander; right?

23 A. That is correct.

24 Q. So you took pictures of this Jeep Commander  
25 because there were -- there was interaction between

1 the black males from the Expedition and the  
2 Escalade who were talking with a black man in the  
3 Jeep Commander; right?

4 A. Not exactly. I -- when I pulled across the  
5 street from the Circle K, I noticed -- well, it was  
6 a very busy -- there was a lot of vehicles there,  
7 just besides, you know, our two target vehicles,  
8 and there were people walking around, people  
9 standing around, people on the phone.

10 I started taking pictures of everyone.

11 Q. Okay.

12 A. You know, starting focusing first on the Ford  
13 Explorer because that's the one I could see.

14 Q. Right.

15 A. I couldn't see the Escalade initially.

16 Q. All right.

17 A. So I focused on the Ford Explorer, started  
18 taking pictures there.

19 If you look at the sequence of photos, they're  
20 all in chronological order. My focus went from  
21 taking pictures around the Ford Explorer to now  
22 people standing near a white Jeep Commander that  
23 were black males --

24 Q. Okay.

25 A. -- and appear to be having, like, a huddled

1 conversation with somebody in the Commander, so I  
2 started taking photos of them. I did not know that  
3 those people were involved at that moment.

4 Q. Okay. Do you know if they're involved to this  
5 day?

6 A. Well, I -- after --

7 Q. I'm talking about the Jeep Commander person.

8 A. No. I don't know.

9 Q. You, however, did get, from your vantage  
10 point, a view of who was in the Jeep Commander;  
11 right?

12 A. No.

13 Q. Well, if that person is described as a black  
14 male --

15 A. Where is that?

16 Q. At 2:47 p.m.

17 A. I didn't describe him. Maybe Agent Sharman  
18 did. I didn't see that person.

19 Q. Okay. So it would be Sharman who saw the  
20 black man?

21 A. I don't know, possibly.

22 Q. Well, if it's not you and it's not Sharman,  
23 who would have said to put in the surveillance log  
24 there's a black man in the Jeep Commander?

25 A. I don't know. You'd have to ask Agent



1     Fernandez who told him that.

2     Q.    Okay.  But it's there though; right?  Somebody  
3     saw a black man in the Jeep Commander?

4     A.    That's what's written, yes.

5     Q.    Okay.  And you couldn't -- because of your  
6     angle, you were taking shots, primarily rear shots;  
7     correct?

8     A.    Of the Commander, you mean?

9     Q.    Right.

10    A.    Well, it's parked facing north into the Circle  
11    K just on the east side, and I'm taking pictures  
12    from the south, so yeah, I'm looking straight  
13    north, and so I only can see the rear of the Jeep  
14    Commander and the sides.

15    Q.    All right.  In the notation at 2:40 -- I'm  
16    sorry -- at 2:47, where it says the black man is  
17    talking with three black males, the Jeep Commander  
18    black man --

19    A.    Yes.

20    Q.    -- that information is going out over the  
21    radio; right?

22    A.    Yes.  I believe I even stated I put out over  
23    the radio that I observed three black males  
24    standing next to the Jeep Commander talking to  
25    someone in the Jeep Commander.

1 Q. And then that would have to be somebody else  
2 who would be able to give the race of the person in  
3 the Jeep Commander?

4 A. Right. I couldn't see that person.

5 Q. All right. But you did see the three black  
6 men talking to somebody in the Jeep Commander?

7 A. Yes.

8 Q. All right. When the Jeep left the Circle K,  
9 was anybody assigned to follow it?

10 A. No.

11 Q. And you can tell that by looking at the  
12 surveillance logs; right?

13 A. Right. I can remember nobody was assigned to  
14 follow it.

15 Q. Okay.

16 A. I was the one that was alerting the command  
17 post that it was departing.

18 Q. Okay.

19 A. And they did not assign anybody to follow it.

20 Q. And let me ask you the -- I guess the pecking  
21 order.

22 You can't leave where you are unless you're  
23 told to leave; right?

24 A. Yes, they -- the command post is going to  
25 designate what targets we stay with and what

1 targets we let go. That's going to be Kent Hush.

2 Q. How many agents were near the Circle K at that  
3 point watching what was going on?

4 A. I'm not sure. The ones that were close in  
5 were myself and Agent Sharman. The other ones were  
6 a distance away, ready to assist when there was  
7 movement, but I'm not sure how many.

8 Q. Within blocks?

9 A. Within blocks, right.

10 Q. Okay. And so the people making the decisions  
11 as to who to follow aren't anywhere near the Circle  
12 K?

13 A. That's right.

14 Q. Okay. So the decision was made by somebody,  
15 you know, a mile or two away or whatever, not to  
16 follow the Jeep Commander?

17 A. Yes.

18 Q. And you had warned them, this Jeep Commander,  
19 whoever's in it talking to the black guys is  
20 leaving right now; right?

21 A. Yes. The reason I warned them is because I  
22 believed that the Jeep Commander was now another  
23 vehicle that was involved with these people.

24 Q. You were watching interaction between --

25 A. Right.

1 Q. -- targets that you were assigned to look at;  
2 right?

3 A. Right.

4 Q. And I assume, then, that the plane overhead  
5 would be hearing this conversation?

6 A. Yes. Well, yes. They'd be hearing all the  
7 interaction between myself and the command post.

8 Q. So the plane, had somebody ask them to, I  
9 suppose, could have followed the Jeep to see where  
10 it was going; right?

11 A. Could have, yes.

12 Q. To your knowledge, at least based on the  
13 surveillance logs, that didn't happen; right?

14 A. Right.

15 Q. All right. Then there's another -- shortly  
16 after that, after the Jeep Commander leaves, your  
17 attention was drawn to a black woman having a  
18 conversation with people in Vehicle 4, which would  
19 I believe would be the Escalade; right?

20 A. Yes.

21 Q. And you saw this conversation taking place;  
22 right?

23 A. What appears to be a conversation. I couldn't  
24 tell you if they were actually in a conversation,  
25 but it appeared as though she was standing -- well,

1 I photographed her standing near the Escalade.

2 Q. Looking into the window?

3 A. Looking into the window, right?

4 Q. I guess you weren't close enough to see her  
5 lips moving or anything?

6 A. Obviously not, yes.

7 Q. But she was standing there, and it looks to me  
8 like she was standing there for four or five  
9 minutes.

10 A. I couldn't be sure on that. I don't know.  
11 I'd have to look at the photographs. The  
12 photographs are all time stamped, so you could  
13 figure that out, how long.

14 Q. Did you photograph her when she walked over to  
15 the car and began the conversation?

16 A. No.

17 Q. You saw the conversation in progress?

18 A. Yeah. Initially I couldn't see the Escalade  
19 from where I was positioned.

20 Q. Okay.

21 A. I only saw it after it was repositioned and  
22 they backed it up to a gas pump on the west side of  
23 the Circle K.

24 Q. Okay.

25 A. And then, after that, I noticed it, started

1 photographing, and as soon as they were backing it  
2 into the pump, she appeared, and that's when I was  
3 photographing her.

4 Q. At 2:52 is when you indicate, at the gas pump,  
5 there's an unknown black female having a  
6 conversation; right?

7 A. That's correct.

8 Q. But that conversation could have begun a  
9 minute or two earlier?

10 A. It could have.

11 Q. And then the next thing is that this vehicle  
12 leaves at 2:57?

13 A. The Escalade?

14 Q. Right.

15 A. Yes.

16 Q. And are you able to estimate how much time  
17 before that those cars left did the woman stop the  
18 conversation?

19 A. No, but it is, I believe, in the series of  
20 photographs, it shows her walking away from the  
21 Escalade.

22 Q. Okay.

23 A. I'm not sure on that, but I'd have to look at  
24 the photographs again.

25 Q. And again, she's put into this surveillance

1 log because she was talking to people who were  
2 targeted to look at; right?

3 A. Right.

4 Q. And again, there were at least two agents at  
5 the Circle K watching or trying to watch what was  
6 going on; right?

7 A. Right.

8 Q. And an unknown number of agents a block or two  
9 away ready to move if something happened; right?

10 A. Right.

11 Q. And you're indicating to the agents who were a  
12 mile away who were in charge of this that this  
13 black woman had a conversation with these guys in  
14 the car; right?

15 A. Yes.

16 Q. Okay. And then you indicate the  
17 conversation's over because these guys are leaving  
18 the Circle K; right?

19 A. That's correct.

20 Q. And certainly, had they wanted to, somebody  
21 could have said, Agent X, get over to the Circle K  
22 and talk to that black woman right now; right?

23 A. Somebody could have, yes.

24 Q. Okay. It appears from the surveillance log  
25 that didn't happen; right?

1 A. No, that didn't happen.

2 Q. But you had told them about this conversation,  
3 and then it's up to them to make that decision;  
4 right?

5 A. That's correct.

6 Q. And that's your job as a surveillance agent,  
7 is to give them information, and then they make the  
8 decision about what to do?

9 A. That's correct.

10 Q. All right. When the Jeep Commander left the  
11 Circle K, were you able to see how many people were  
12 in it?

13 A. No, I couldn't.

14 Q. So the only indication of who was in the Jeep  
15 Commander that we have from the surveillance log  
16 would be that there was a black man in the Jeep  
17 Commander; right?

18 A. In one of the photographs, the series of  
19 photographs, as the Jeep Commander is departing,  
20 you can see just a partial rear head area of the  
21 driver.

22 Q. Was that the black man? Could you tell the  
23 race?

24 A. I couldn't tell.

25 Q. Okay. How about, was there anybody else in



1 the Jeep Commander besides the driver?

2 A. I don't know.

3 Q. You couldn't tell from the photos?

4 A. No.

5 Q. Or from your vantage point; right?

6 A. No. The windows are a dark tint. I couldn't  
7 tell. I photographed it as it was leaving.

8 Had the windows been light, it probably would  
9 have indicated people inside, if there were people  
10 inside, but they were dark.

11 Q. Okay. So you don't know if there was a woman  
12 inside, for instance?

13 A. No.

14 Q. Or children or anything like that?

15 A. No.

16 Q. Did you ever see at any point a Volvo or its  
17 occupants or the occupants of a Volvo having an  
18 interaction or talking with the people from the  
19 Expedition or the Escalade?

20 A. I didn't, but I didn't have full view of the  
21 Escalade at all times.

22 Q. Apparently nobody else saw that either, at  
23 least, because there's no Volvo or occupants listed  
24 in the surveillance log; right?

25 A. That's correct. There is no Volvo listed in

1 the log.

2 Q. Okay. What about a blue Kia? Did you ever  
3 see a blue Kia, where there were occupants  
4 interacting with any of the targets, the Escalade,  
5 the Expedition, the Jeep Commander, anything?

6 A. No.

7 Q. And nobody told you at any time, we've got to  
8 watch this blue Kia or check it out, and you never  
9 saw it; right?

10 A. I don't recall any talk about a blue Kia.

11 Q. How about a gold Lexus? Did you ever see a  
12 blue Lexus -- or I'm sorry -- a gold Lexus or the  
13 occupants of a gold Lexus interacting with any of  
14 the other vehicles or the occupants of any of the  
15 vehicles?

16 A. No.

17 Q. And again, that's the sort of thing that you  
18 were trying to document; right?

19 A. Trying --

20 Q. Trying to document interactions between target  
21 vehicles and people --

22 A. Right, exactly.

23 Q. Okay. And finally, there was -- during the  
24 surveillance, and I -- under the individuals  
25 observed, there's a classification of a lot of

1 people broken down by race; correct?

2 That would be on page one.

3 A. Yes. The way he has written it is basically,  
4 yes, unknown, and then sex and then race.

5 Q. And then there is one two, three, four, five,  
6 six Hispanic males listed; right?

7 A. Right.

8 Q. And there is 13 black people listed?

9 A. That's correct.

10 Q. One female and 12 men?

11 A. That's correct.

12 Q. And during the entire time that you were  
13 watching all the locations, the Circle K, the  
14 warehouse, Food City, you never saw any interaction  
15 between the Hispanics and the blacks; right?

16 A. I didn't.

17 Q. Okay. And it's not noted in the log either,  
18 is there?

19 A. The only -- the only time I saw a Hispanic  
20 individual near a black individual was when I  
21 photographed the Commander at the Circle K. There  
22 is a Hispanic male standing on one side of the  
23 Commander at one point after the black males  
24 departed the other side the Commander.

25 Q. But you never saw any interaction between --

1 A. No.

2 Q. -- that person photographed or any other black  
3 male; right?

4 A. No.

5 MR. COOPER: Okay. That's all I have.  
6 Thank you.

7 CROSS-EXAMINATION

8 BY MR. ARMSTRONG:

9 Q. Good morning.

10 A. Good morning, sir.

11 Q. I wanted to talk to you a little bit about the  
12 initial meeting the FBI personnel who were assigned  
13 to do the observations of the Food City had.

14 And I don't recall whether Ms. Hopkins went  
15 over that with you. Hopefully it's not -- it's  
16 nothing we're going to repeat here.

17 When did you meet or did you, in fact, have a  
18 -- sort of a briefing with the other FBI agents who  
19 were going to be doing the surveillance?

20 A. There was a briefing, I believe, that Agent  
21 Hush attended that involved a large portion of the  
22 other aspects of people involved in the takedown,  
23 like, for instance, SWAT team, and the squad  
24 agents, but I was not at that meeting.

25 Q. Okay. Did you have a meeting with any of the

1 other agents before you went to the Food City?

2 A. Only Agent Hush.

3 Q. Okay. It was just Hush and you, or you and  
4 Hush?

5 A. I don't recall. It may have been myself and  
6 Russ Klawenn, but I don't recall.

7 Q. And when did that meeting occur?

8 A. The day prior.

9 Q. I'm sorry?

10 A. The day prior, so on March --

11 Q. 1st?

12 A. 1st, that's correct.

13 Q. Do you remember the time of the day?

14 A. No.

15 Q. And Agent Hush told you to keep a look out for  
16 a Murano and that was it, at least as far as cars  
17 went?

18 A. Right.

19 Q. How long did your meeting last?

20 A. Just a few minutes.

21 Q. All right. Do you know how many aircraft, FBI  
22 aircraft, were being used to conduct surveillance  
23 on March 2nd here in Tucson?

24 A. Yes.

25 Q. You do know?

1 A. Yes.

2 Q. Was it just one?

3 A. Two.

4 Q. There were two. Okay.

5 Alex Jones was pilot of one?

6 A. That's correct.

7 Q. Do you know the pilot of the other?

8 A. No.

9 Q. Did Agent Hush explain to you what your --  
10 well, your duties in regard to Food City were just  
11 to keep an eye on the situation?

12 A. Observe, collect any intelligence that  
13 developed at that location, and --

14 Q. You were not intending on arresting anybody at  
15 the Food City parking lot; is that correct?

16 A. That's correct.

17 Q. I think you told Mr. Cooper that there were  
18 FBI agents from Tucson conducting surveillance, but  
19 there were also some Phoenix agents assigned to  
20 this operation; is that right?

21 A. That's correct.

22 Q. And when you were at the Food City, I know you  
23 got there early, Fernandez was across the street,  
24 on east side of Sixth, keeping an eye -- he was on  
25 the east side, and you were on the north side;

1 correct?

2 A. That's correct.

3 Q. And there were some other agents following the  
4 Murano down out of Phoenix?

5 A. That's correct.

6 Q. Is that the extent of the agents that were  
7 doing surveillance in Tucson that day?

8 I guess I'm trying to ask, was there anybody  
9 else out there who, other than Fernandez and you  
10 and then the folks following the Murano, was there  
11 anybody else doing surveillance?

12 A. Yeah, the only people doing surveillance in  
13 Tucson are the ones indicated on the log here.

14 Q. Okay. All right. And after the vehicle got  
15 -- the Murano arrived in Tucson, do you know what  
16 happened to those surveillance officers?

17 A. No, I don't. They eventually joined into the  
18 surveillance of the Explorer and of the Escalade  
19 because I heard them on the radio.

20 Q. Well, I believe Mr. Sharman did.

21 A. Yes.

22 Q. Is that correct?

23 A. Yes.

24 Q. Who else joined in on the surveillance of  
25 those two vehicles?

1 A. I'm not sure. A number of them, but I  
2 couldn't tell you which ones.

3 Q. Who else was at the Circle K, other than you  
4 and Sharman?

5 A. I don't know. I can only say how we normally  
6 operate. I don't know exactly why, where they  
7 would have been positioned that day.

8 Q. Okay. Do you know whether, in fact, other  
9 than you and Sharman, anybody else was observing  
10 the Cadillac and the Ford at the Circle K on the  
11 afternoon of March 2nd?

12 A. Yeah, the only other -- what the airplane was  
13 observing, the activity going on.

14 Q. Other than you two and the plane?

15 A. No, I don't know.

16 Q. All right. You left for good -- and if I've  
17 got the times wrong, tell me.

18 You left the Food City for good at 2:06?

19 A. Right.

20 Q. Okay. You had not seen the Cadillac, the  
21 black Cadillac pickup truck, or the Ford Expedition  
22 by the time you left; is that right?

23 A. That's correct.

24 Q. The first time you saw those vehicles was at  
25 the Circle K at 2:45-ish?



1 A. That's correct.

2 Q. All right. And you were alerted to the  
3 significance of those vehicles by someone in the  
4 FBI?

5 A. That's correct.

6 Q. You observed -- when you were at the Circle K  
7 watching those vehicles, you didn't observe  
8 anything necessarily criminal in and of itself, did  
9 you?

10 A. I did not.

11 Q. And I know Mr. Cooper went over this with you  
12 before, but in that Buick, I think it's called  
13 Vehicle No. 5 that you were observing --

14 A. I wasn't observing it --

15 Q. Excuse me.

16 A. -- but somebody was.

17 Q. Somebody was. There was two black males in  
18 that vehicle; correct?

19 A. I can only tell you what's indicated on the  
20 log.

21 Q. Okay. Take a look at, I think, 2:19. It may  
22 have been the first notation there.

23 A. Yes, it's indicated in the log that there were  
24 two black males in the Buick LeSabre observed by  
25 Agent Sharman.

1 Q. And is 2:19 the first time the Buick was  
2 observed by anybody on your surveillance team?

3 A. Yes.

4 Q. Were you able to observe the black female at  
5 the Circle K, what she did after she left the  
6 immediate vicinity of the Cadillac?

7 A. No, I could not observe her further.

8 Q. You didn't see her leave?

9 A. No.

10 MR. ARMSTRONG: Thank you. I have nothing  
11 further.

12 THE COURT: Okay.

13 CROSS-EXAMINATION

14 BY MR. YOUNG:

15 Q. Sir, we'll go straight to 2:47 on the  
16 surveillance log.

17 At 2:47, both yourself and James Sharman, you  
18 both observed an unknown black male, M-18, in the  
19 white Jeep Commander at the Circle K; is that  
20 right?

21 A. That is incorrect. I did not observe anybody  
22 in the Jeep Commander other than when I  
23 photographed it departing, I could see, like I  
24 said, a partial rear head area of the driver.

25 Q. You are No. 30 on the surveillance log; right?

1 A. That's correct.

2 Q. And your initials are by the No. 30 and by  
3 your name on the front of the surveillance log?

4 A. That's correct.

5 Q. And so you've initialed this surveillance log  
6 as comporting with your observations?

7 A. That's correct.

8 Q. And at 2:47, I see the number 30 next to the  
9 observation, "Unknown black male in a white 2007  
10 Jeep Commander is observed talking with three black  
11 males."

12 A. I reported that observation as I observed  
13 three black males talking to -- appeared to be  
14 talking to somebody in the Jeep Commander. I did  
15 not give a description who that person was.

16 It could be that Agent Sharman did but I  
17 didn't.

18 Q. Well, your No. 30 is next to that entry;  
19 right?

20 A. Right.

21 Q. And you've initialed this log?

22 A. Well, I had part of that observation. There's  
23 two of us indicated. Oftentimes one agent may see  
24 part of it and the other agent may see the second  
25 part of the observation.

1           I only saw the black males talking to the Jeep  
2 Commander. I did not see the -- other than when I  
3 photographed them departing, I did not see anybody  
4 in the Jeep Commander.

5 Q. Fair enough. And I'm already getting  
6 sidetracked. The point I wanted to get to was  
7 that, at 2:47, the white Jeep Commander left?

8 A. Yes.

9 Q. So the white Jeep Commander was first seen at  
10 2:47, and the white Jeep Commander left at 2:47?

11 A. It could be a minute or so, you know,  
12 difference there. I believe the time stamps on the  
13 photos may show -- yeah, probably. By the time I  
14 started snapping photos, from the time I first  
15 snapped the photos of the three black males  
16 standing next to the Jeep Commander to the time it  
17 actually departed was maybe a minute or two,  
18 possibly two minutes.

19 Q. The point being it was a short conversation,  
20 and the white Jeep Commander did not hang around  
21 very long?

22 A. That's correct.

23 Q. Now, I notice from the surveillance log at  
24 2:52 that both the Expedition and the Escalade were  
25 still hanging around.

1 A. That's correct.

2 Q. At 2:52, Vehicle 4, the Escalade, they were  
3 talking to a black female?

4 A. Well, the -- I couldn't see who was talking to  
5 a black female. All I could see was a black female  
6 standing next to the passenger side of the  
7 Escalade, appearing to be talking to someone in  
8 there, but I couldn't see. Again, the windows were  
9 dark in that vehicle.

10 Q. And you said you snapped some photos of that?

11 A. Yes, sir.

12 Q. And in fact, there is a "P" next to that  
13 paragraph in the surveillance log. That probably  
14 indicates that you took some photos.

15 A. Yes, sir.

16 Q. Those photos weren't particularly relevant to  
17 the case, it didn't turn out?

18 A. I don't know their relevancy, sir.

19 Q. The female, she didn't factor in any further  
20 surveillance in the case?

21 A. I don't know that, sir. I don't know.

22 Q. Your team leader didn't have anybody follow  
23 the female or anything like that?

24 A. No.

25 Q. So she, as far as you know, was just one of

1 the local females that they were talking to?

2 A. Don't know.

3 Q. In any case, nobody was concerned enough to  
4 follow her?

5 A. We had limited resources. Somebody had to  
6 make a split-second decision about where to direct  
7 the resources.

8 Q. The -- both vehicles, the Expedition and the  
9 Escalade, they continued hanging around the Circle  
10 K until 2:57, when they finally left?

11 A. 2:57, yes, sir.

12 Q. So they were there at the Circle K. They got  
13 to the Circle K at 2:40, and they left the Circle K  
14 at 2:57?

15 A. That's correct.

16 Q. So they spent 17 minutes total hanging out at  
17 the Circle K?

18 A. That's correct.

19 Q. At 2:19 is when surveillance first noticed  
20 them in the Food City parking lot?

21 A. That's correct.

22 Q. And I think testimony was that they eventually  
23 left the Food City parking lot at 2:34.

24 A. Can you -- can you rephrase that question? At  
25 2:34 is when, I guess, the Murano --

1 Q. I'm jumping around a bit on you.

2 A. Yeah.

3 Q. 2:34, we're back at the Food City now.

4 A. Oh, okay. You're talking about the red Ford  
5 Expedition?

6 Q. Yes, the Expedition and the Escalade, they  
7 left the Food City at 2:34; is that right?

8 A. That's correct.

9 Q. So they were at the Food City for at least 15  
10 minutes?

11 A. They arrived there. Let's see. 2:19 they  
12 were noticed, right, and then they depart at 2:34.

13 Q. So they didn't seem to be in any particular  
14 hurry to leave the Food City?

15 A. I don't know.

16 Q. They spent 15 minutes there; right?

17 A. It appears so from the log, yes.

18 Q. Now, they were parked next to a gold Buick  
19 LeSabre that was also noticed at 2:19; right?

20 A. That's correct.

21 Q. And that gold Buick LeSabre, that was out of  
22 there at 2:20 right?

23 A. 2:20 it departed, according to the log, yes,  
24 sir.

25 Q. So the gold Buick LeSabre didn't wait around

1 for any length of time?

2 A. It appears not.

3 Q. And the white Jeep Commander also did not wait  
4 around for any appreciable length of time; is that  
5 correct?

6 A. I don't know what you mean by waiting around.  
7 It was there when I arrived, and it departed  
8 shortly after I arrived.

9 Q. The white Jeep Commander at the Circle K, it  
10 was there at 2:47 and it left at 2:47.

11 A. Yeah, within about a minute or two.

12 Q. The surveillance team was watching the gray  
13 Nissan Murano the entire time?

14 A. Once the takedown occurred at the warehouse,  
15 that vehicle was out of their surveillance,  
16 obviously. I believe it stayed there.

17 Q. Well --

18 A. Yeah.

19 Q. Right. Once you arrested everybody in the  
20 vehicle, you quit watching the vehicle?

21 A. Obviously, yes.

22 Q. I'll accept that.

23 The occupants of the gray Nissan Murano never  
24 went over and talked to anyone in the Expedition or  
25 the Escalade, did they?



1 A. No. We didn't see any interaction between  
2 those vehicles.

3 Q. Vehicle 2 was the gold Chevy Optra driven by  
4 the confidential informant?

5 A. I don't know.

6 Q. You don't know who the driver was. But  
7 Vehicle 2 was the gold Chevy Optra?

8 A. That's correct.

9 Q. And nobody from the gold Chevy Optra ever went  
10 over and interacted with either the Expedition or  
11 the Escalade?

12 A. I don't know that.

13 Q. Did you ever observe that?

14 A. No, I did not.

15 Q. Did anybody observe that?

16 A. Not to my knowledge.

17 Q. The blue Kia, nobody ever noticed a blue Kia,  
18 did they?

19 A. I did not notice any blue Kia.

20 Q. And it's not listed as one of the vehicles  
21 that was ever observed?

22 A. It's not listed in the log, sir.

23 Q. A gold Volvo, that's not listed in the logs  
24 either?

25 A. That's correct.

1 Q. And a gold Lexus, nobody ever saw a gold  
2 Lexus?

3 A. I didn't see a gold Lexus.

4 Q. And nobody noted a gold Lexus in the  
5 surveillance log?

6 A. That's correct.

7 MR. YOUNG: That's all I have, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. HOPKINS:

10 Q. Agent Sharkey, if you could take a look at  
11 what's been admitted as Government's Exhibit 61-E.

12 Now, this is a photo you were asked a few  
13 questions about from defense counsel; right?

14 A. Yes.

15 Q. And this is the photo that you described as  
16 the black males from the Expedition and the  
17 Escalade were talking to an occupant of the Jeep  
18 Commander?

19 A. Yes.

20 Q. And at this vantage point, can you tell who  
21 the occupant of the Jeep Commander is?

22 A. I cannot.

23 Q. You can't determine his race from this  
24 photograph, obviously?

25 A. No.

1 Q. Okay. And if we could take a look at what's  
2 been admitted as 61-G.

3 Now, you said that there was a sequence of  
4 photographs; correct?

5 A. That's correct.

6 Q. And so there were a couple of photographs in  
7 between, but the next photograph of the Jeep shows  
8 a person standing close to it.

9 MR. COOPER: Objection. This is a leading  
10 question.

11 THE COURT: Overruled.

12 BY MS. HOPKINS:

13 Q. Do you see the person --

14 A. Yes.

15 Q. -- standing close to the Jeep?

16 A. Yes.

17 Q. Now, if we could possibly make that a little  
18 bigger, that person there.

19 Can you tell that person's nationality?

20 A. It appears to be a Hispanic male.

21 Q. And if you can zoom back out.

22 And the person that's standing a little ways  
23 away from him, was that one of the people that you  
24 observed talking to the occupant of the Jeep  
25 Commander?

1 A. Yes, the person to the right, with the hat.

2 Q. And so the only people that you photographed  
3 at or near the Jeep Commander were the people  
4 that -- the black males that were talking to the  
5 occupant and this Hispanic male, photographed right  
6 there?

7 A. That is correct.

8 Q. Now, you testified that the Jeep wasn't there  
9 that long?

10 A. That's correct.

11 Q. But was the Jeep there long enough for the  
12 occupant to have a conversation with the black  
13 males that you observed in the Circle K parking  
14 lot?

15 A. Yes.

16 Q. Now, you testified that you observed a black  
17 female at the Circle K; is that correct?

18 A. The one speaking to -- appeared to be speaking  
19 someone in the Escalade?

20 Q. Yes.

21 A. Yes, I did see that.

22 Q. And did she get in the Escalade at any point?

23 A. Not that I saw, but I did not see the Escalade  
24 the entire time.

25 Q. Okay. And did her car follow -- the car that

1 she was in, did that car follow the Escalade and  
2 the Expedition out of the Circle K parking lot?

3 A. I didn't see her in any car.

4 Q. Okay. Now, during the course of surveillance  
5 involving multiple vehicles, are there times when  
6 you have to let certain vehicles go and remain at  
7 your -- or remain on designated targets?

8 A. Yes, because we have a limited number of  
9 resources, and we've got to focus -- somebody's got  
10 to determine what the primary focus is for that  
11 moment.

12 Q. And was that the situation in this case?

13 A. Yes.

14 MS. HOPKINS: I have no further questions.

15 THE COURT: If the jurors have any  
16 questions, please place them in writing.

17 There is at least one.

18 (A discussion was held at the bench.)

19 THE COURT: "Clarify the time line. The  
20 warehouse arrest, what time? The Prince Road  
21 turnaround, what time? The time of the Food City  
22 departure?" Okay.

23 "Is the red Explorer the same vehicle as  
24 the red Expedition? I keep hearing reference to  
25 both models."

1 MR. YOUNG: That's probably my bad, Your  
2 Honor.

3 THE COURT: Yeah, it is your bad.

4 (End of bench conference.)

5 THE COURT: I have a couple of questions  
6 from the jurors that I'm going to ask on their  
7 behalf.

8 Is the red Explorer the same vehicle as  
9 the red Expedition?

10 THE WITNESS: I'm sorry? Did I misspeak  
11 on some of my testimony? There is only one red SUV  
12 that I observed. It's an Expedition.

13 THE COURT: All right.

14 THE WITNESS: Yes. I may have misspoke.

15 THE COURT: Can you clarify the time  
16 line? What time was the arrest at the warehouse,  
17 if you know?

18 THE WITNESS: I don't know.

19 THE COURT: Can you look at the log and  
20 tell? If you can't, you can't.

21 THE WITNESS: I can only tell you when the  
22 last time the Murano arrived at the warehouse.

23 THE COURT: What time was that?

24 THE WITNESS: It is 2:15.

25 THE COURT: Can you tell what time the

1 Prince Road turnaround took place?

2 THE WITNESS: Yes, 3:01.

3 THE COURT: And the time of the departure  
4 from Food City?

5 THE WITNESS: For which --

6 THE COURT: Both times.

7 THE WITNESS: Well, there is a number of  
8 departures from the Food City. There's the Murano  
9 departure.

10 THE COURT: Okay. What time was that?

11 THE WITNESS: The first Murano departure  
12 was 12:26 p.m. The second Murano departure was  
13 with -- when it left with the gold Optra. That was  
14 at 1:36 p.m.

15 THE COURT: Okay.

16 THE WITNESS: I'm sorry. That was at  
17 1:39 p.m.

18 THE COURT: 1:39, not 1:36?

19 THE WITNESS: Yes. The third -- the  
20 Murano departs then again at 2:06.

21 And then the red Ford Expedition and the  
22 black Escalade, well, first -- I would say the gold  
23 Buick LeSabre departed the Food City at 2:20 p.m.  
24 The red Ford Expedition and the black Escalade  
25 depart the Food City at 2:34 p.m.

1           And I believe, Your Honor, that's all the  
2 Food City departures.

3           THE COURT: Do you have one of the  
4 Expedition returning back and then leaving again?

5           THE WITNESS: Oh, you're right, yes.  
6 Yeah, the final departure for them, then, is  
7 3:15 p.m.

8           THE COURT: Ms. Hopkins, any further  
9 questions based upon the jurors' questions?

10          MS. HOPKINS: No, Your Honor.

11          THE COURT: Mr. Cooper?

12          MR. COOPER: No, Your Honor.

13          THE COURT: Mr. Armstrong?

14          MR. ARMSTRONG: No.

15          THE COURT: Mr. Young?

16          MR. YOUNG: No, Your Honor.

17          THE COURT: You may step down.

18          THE WITNESS: Thank you, Your Honor.

19          THE COURT: We'll take about a five-minute  
20 recess, just five.

21               (The jury exits the courtroom.)

22               (Off the record.)

23               (The jury enters the courtroom.)

24          THE COURT: Show the jurors returning to  
25 the courtroom, the presence of all counsel and the



1 defendants.

2 You may call your next witness.

3 MR. LACEY: Yes, Mr. -- Agent Cantu.

4 Please.

5 EDUARDO CANTU, WITNESS, SWORN

6 THE COURT: Sir, the Rule has been invoked  
7 in this case. That means, except during the time  
8 that you're testifying, you must remain outside the  
9 courtroom, and you're only allowed to discuss your  
10 testimony with the attorneys involved in the case.

11 THE CLERK: Please state your name for the  
12 record and spell your last name.

13 THE WITNESS: Eduardo Cantu, last name  
14 C-a-n-t-u.

15 THE COURT: You may proceed.

16 MR. LACEY: Thanks, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. LACEY:

19 Q. Agent Cantu, you're employed by whom?

20 A. United States Border Patrol.

21 Q. And you've been with the border patrol for how  
22 long?

23 A. Five years, sir.

24 Q. And what's your training? What training did  
25 you have before you came to the border patrol, law

1 enforcementwise?

2 A. I'm currently serving -- work for the border  
3 patrol tactical unit. I've been with them for the  
4 last three years.

5 Q. And border patrol tactical unit, what is that?

6 A. It's a unit basically to respond to high-level  
7 threat situations that -- we have specialized  
8 skills, more training than any ordinary border  
9 patrol agent.

10 We have, I guess, specialized weapons too,  
11 training and gear, as far as to handle more  
12 dangerous situations.

13 Q. And when you say tactical unit, that's  
14 comparable to a SWAT team from other law  
15 enforcement agencies; is that correct?

16 A. Correct.

17 Q. I want to direct your attention back to March  
18 2nd of last year. Were you on duty back on that  
19 date?

20 A. Yes, sir.

21 Q. Did you receive a call for assistance in a --  
22 for stopping vehicles on I-10 back on that date?

23 A. Yes, sir.

24 Q. About what time of day was this? Do you  
25 remember offhand?

1 A. That was near four o'clock in the afternoon on  
2 the 2nd of March.

3 Q. March 2nd?

4 A. Yes.

5 Q. And that took place at what location  
6 approximately?

7 A. It was near the town of Eloy, I want to say.  
8 Actually, I have it in my report. Near mile marker  
9 200 on the westbound I-10.

10 Q. Up roughly by the Casa Grande/Eloy area?

11 A. Correct.

12 Q. The vehicle or vehicles you were looking to be  
13 involved in stopping that day, can you give us a  
14 description of the vehicles and which one if any of  
15 those you were involved in stopping.

16 A. There was -- I was involved in stopping the  
17 red -- a red Expedition, and there was also a black  
18 Escalade/Avalanche type of vehicle.

19 Q. How many agents were in the vehicle that you  
20 were in when you got involved in this stop?

21 A. Two. Two vehicles were involved in stopping  
22 the red Expedition, a Suburban and a Tahoe. The  
23 Suburban had three agents in it. They were the  
24 primary unit right behind the Expedition, and I was  
25 in a Tahoe along with another agent behind them.

1 Q. And when this stop took place, how did you go  
2 about pulling over the Expedition, the one you were  
3 involved with?

4 A. The vehicle initiated the stop. The vehicle  
5 stopped. We were right behind them. The vehicle  
6 in the front, one agent was addressing the subjects  
7 in the vehicle with the public address system while  
8 the other two were basically pulling security.  
9 That means they were just making sure basically  
10 nothing bad happened while the agent in my vehicle  
11 and myself were putting hands-on as each of the  
12 subjects were called out back towards where we  
13 were.

14 Q. And when you say hands-on, what do you mean by  
15 that?

16 A. As the subjects -- as the agent who was  
17 addressing each of the subjects to come out of  
18 their vehicle and basically walking them back  
19 towards where we were, I was the one placing my  
20 hands on them, handcuffing them, and placing them  
21 in a secure location near our vehicles.

22 Q. I want to direct your attention to Exhibit  
23 63-C, as in Charlie, please.

24 I would ask you to look at this and tell us if  
25 you can identify that.

1 A. Yes. That's the red Expedition I was involved  
2 with stopping.

3 Q. And in relation to the red Expedition, where  
4 was your vehicle parked?

5 A. Anywhere between 20 to 40 yards behind it.

6 Q. And the other vehicle, the stopped vehicle,  
7 was -- where was that positioned in relationship to  
8 your vehicles and the Expedition?

9 A. I'm sorry? Repeat that again.

10 Q. Yeah, the second vehicle you mentioned, was  
11 there a Suburban involved?

12 A. That was a little bit -- that was in front of  
13 my vehicle, like I said, approximately anywhere  
14 between 20 to 30 yards or feet, let's say, behind  
15 it.

16 Q. Okay. In relationship to the vehicle, did the  
17 vehicle pull over then? When you moved to stop it,  
18 did you use any lights on the vehicles?

19 A. Yes. The Suburban in front of us initiated  
20 the stop with, you know, turning on the emergency  
21 light equipment, along with myself in my vehicle.  
22 The vehicle did pull over, and we pulled in behind  
23 it.

24 Q. And does this photograph accurately reflect  
25 the vehicle that you were involved in stopping back

1 on March 2 of last year, up by Casa Grande/Eloy?

2 A. Yes, sir.

3 MR. LACEY: We'd offer 63-C, as in  
4 Charlie, at this time.

5 MR. ARMSTRONG: No objection.

6 MR. COOPER: No objection.

7 MR. YOUNG: No objection, Your Honor.

8 THE COURT: It can be admitted, can be  
9 published.

10 BY MR. LACEY:

11 Q. In this vehicle, you said when you first  
12 pulled up, you were behind the vehicle. When you  
13 came to do the hands-on arrest, where did you  
14 position yourself?

15 A. I was positioned myself behind -- the vehicle,  
16 the initial vehicle in front of me who had the  
17 emergency light equipment on, the door -- the  
18 driver's door was open, and one of the agents was  
19 pulling security. I was right behind him.

20 As the first subject start walking backwards  
21 towards us as he was instructed to do so, once he  
22 got near within reach of where we were, I put  
23 hands-on and placed him on the side of our vehicles  
24 where they were secured.

25 Q. Okay. And after you put -- you put cuffs on,

1 I take it?

2 A. Yes.

3 Q. Behind the back?

4 A. Yes.

5 Q. And after you did that, where did you position  
6 that person, the person that had been the driver  
7 that you had taken out?

8 A. There was just, I guess, on the driver's side  
9 area of the second vehicle behind the first  
10 vehicle, which was my vehicle, right behind, like I  
11 said, that first vehicle.

12 Q. Now, as you're on I-10, were you going towards  
13 Phoenix, in that direction, or towards Tucson when  
14 you were up in Eloy, Casa Grande?

15 A. Yes, sir. We were in the westbound lanes  
16 towards Phoenix.

17 Q. Westbound towards Phoenix?

18 A. Yes.

19 Q. Did you take any other photographs that day  
20 during the course of this stop on the freeway?

21 A. Yes. After all the subjects who were taken  
22 out of the vehicle were secured, I was assigned by  
23 my TO to start taking pictures of the scene in  
24 general, the vehicle, the subjects, and everything  
25 that was going on in that area.

1 Q. Now, after you took the driver out, as you've  
2 told us, and placed him back by the vehicles,  
3 behind the Expedition, who did you take out next?  
4 Who was the next person out of the vehicle?

5 A. The front passenger -- the front passenger was  
6 called out next.

7 Q. Okay. And were you involved in that take-out  
8 as well?

9 A. Yes.

10 Q. Hands-on, as you say?

11 A. Yes.

12 Q. And with that person, did you go through the  
13 same process about moving that person?

14 A. Yes.

15 Q. Back -- back through in the general area of  
16 where the first person, the driver, had gone?

17 A. Yes, sir.

18 Q. And how many other persons were in the  
19 vehicle?

20 A. Two others.

21 Q. And they were in the back seat, obviously?

22 A. Yes.

23 Q. The same process?

24 A. Yes.

25 Q. I want to direct your attention to 63-A, as in



1 apple, and tell us -- look at that and see if you  
2 can identify that.

3 A. Yeah. That's a picture I took of the plates  
4 of the Expedition there.

5 Q. Okay.

6 MR. LACEY: We'd offer 63-A at this time.

7 MR. COOPER: No objection.

8 MR. ARMSTRONG: No objection.

9 MR. YOUNG: No objection, Your Honor.

10 THE COURT: It can be admitted, can be  
11 published.

12 BY MR. LACEY:

13 Q. AFA4844 was the license tag; is that correct?

14 A. Correct.

15 Q. We'd ask the witness be shown Exhibit 63-B, as  
16 in boy.

17 Can you identify that for us?

18 A. Yes. That's the picture of the back of the  
19 Expedition, while the back door was open.

20 Q. And does that accurately depict the condition  
21 of the Expedition as you saw it after you stopped  
22 it on the I-10 freeway back on March 2nd?

23 A. Yes. After we made the scene clear, meaning  
24 safe, doors were opened, and that's when I started  
25 taking pictures. That's how it looked.

1 MR. LACEY: We'd offer 63-B at this time.

2 MR. ARMSTRONG: No objection.

3 MR. YOUNG: No objection, Your Honor.

4 MR. COOPER: No objection, Judge.

5 THE COURT: It can be admitted and  
6 published.

7 BY MR. LACEY:

8 Q. Now, I noticed in the back -- in the center of  
9 the photograph but in the back of the vehicle is a  
10 cooler, is that correct, an ice chest?

11 A. Yes.

12 Q. And was that back there then?

13 A. Yes.

14 Q. We'd ask you to look at Exhibit 63-D, as in  
15 dog, please.

16 Can you identify this for us?

17 A. That was a picture of the back seat.

18 Q. Of the Expedition?

19 A. Correct.

20 Q. Can you tell if it's the driver's back seat or  
21 passenger side back seat, or can you tell from this  
22 photograph?

23 A. If I recall correctly, I believe it was the  
24 driver's side back seat.

25 MR. LACEY: We'd offer 63-D at this time.

1 MR. ARMSTRONG: No objection.

2 MR. COOPER: No objection.

3 MR. YOUNG: No objection, Your Honor.

4 THE COURT: It can be admitted, can be  
5 published.

6 BY MR. LACEY:

7 Q. And so as we look at the photograph here, in  
8 the center part of it, the top part, is that the  
9 back seat, the back of the front seat that you can  
10 see there?

11 A. Yeah. That's the bottom of the back seat of  
12 the back area of the Expedition.

13 Q. And this light green -- it looks like a piece  
14 of clothing or whatever you want to call it -- had  
15 some strings or straps through it; is that correct?

16 A. Correct.

17 Q. We'd offer -- we'd ask that the witness be  
18 shown Exhibit 63-E as in Edward.

19 Can you identify that for us?

20 A. Yes. That's the picture of the -- that black  
21 Tahoe that was my vehicle, and the subjects that  
22 were taken out are being identified by those agents  
23 right there that were -- that are shown there.

24 MR. LACEY: And we'd offer 63-E at this  
25 time.

1 MR. COOPER: No objection.

2 MR. ARMSTRONG: No objection.

3 MR. YOUNG: No objection.

4 THE COURT: It can be admitted, can be  
5 published.

6 BY MR. LACEY:

7 Q. And sir, just now that jury has been able to  
8 look at the photograph, we see a lot of law  
9 enforcement cars in this photograph, do we not,  
10 alongside of the road, police cars?

11 Do you see police cars in this picture?

12 A. Yes, sir.

13 Q. And the black vehicle in the front of the  
14 picture to the left, what vehicle is that?

15 A. That was my vehicle.

16 Q. Okay. And the Expedition that we looked at  
17 that you stopped, where was that positioned in  
18 relationship to your vehicle then?

19 A. Several feet in front of that vehicle. In  
20 front of that Tahoe was another Suburban that  
21 initiated the stop, and then right in front of that  
22 was the Expedition.

23 Q. Now, I'm looking in this photograph. Off  
24 behind the second law enforcement car there, there  
25 appears to be a red-topped truck.

1           Was traffic stopped at this point in time?

2   A.   I believe so.  There was a lot of things going  
3   on that day, and if I remember correctly, traffic  
4   was stopped for a while.  I don't remember how  
5   long, but there was traffic stopped.

6   Q.   We'd ask the witness be shown Exhibit 63-F, as  
7   in Frank, please.

8           Can you identify this for us?

9           MR. COOPER:  Judge, can we approach?

10          THE COURT:  Sure.

11          (The following proceedings occurred at the  
12          bench.)

13          MR. COOPER:  What's the relevance of  
14   showing the jury these guys in handcuffs sitting on  
15   the side of the road with cops standing over them?

16          MR. LACEY:  The relevance is  
17   identification as far as who's wearing what  
18   clothes.  There is an issue about photographs from  
19   Circle Ks and other things.  We'll identify who is  
20   wearing what clothing.

21          MR. YOUNG:  I have better shots of them in  
22   custody.

23          MR. COOPER:  There are pictures of them,  
24   what they're wearing, without them in handcuffs  
25   like that.

1 THE COURT: Do you have better pictures?  
2 Let's take a look at them.

3 MR. LACEY: We have other pictures.

4 THE COURT: Bring them and we'll take a  
5 look at them.

6 MR. LACEY: Just for the sake of time,  
7 we'll not push it. I'll just back this one out.

8 THE COURT: Okay.

9 (End of bench conference.)

10 BY MR. LACEY:

11 Q. We'd ask also the witness be shown 63-G, as in  
12 George, please.

13 Can you identify that for us?

14 A. Yes. That was a red Expedition we were  
15 involved in stopping.

16 Q. The same one we've been talking about?

17 A. Yes.

18 MR. LACEY: We'd offer 63-G at this time.

19 MR. COOPER: No objection.

20 MR. ARMSTRONG: No objection.

21 MR. YOUNG: No objection, Your Honor.

22 THE COURT: It can be admitted, can be  
23 published.

24 BY MR. LACEY:

25 Q. The vehicle that we see here, what part of the

1 freeway was this vehicle stopped on? Was it in the  
2 center median, or was it off to the right side?

3 Do you recall offhand?

4 A. It was the center median.

5 Q. And the vehicle doors, obviously nobody is in  
6 the vehicle at this time. Was this after the  
7 people were taken out of the vehicle?

8 A. Yes. Once all four subjects were taken out of  
9 the vehicle, we make sure no one else was in the  
10 vehicle, and we -- it was clear.

11 Q. We'd ask the witness be shown Exhibit 63-H, as  
12 in Henry.

13 We'd ask if you can identify that for us.

14 A. That's the driver's seat, passenger seat, in  
15 front of, you know, the red Expedition.

16 MR. LACEY: We'd offer 63-H at this time.

17 MR. COOPER: No objection, Judge.

18 MR. ARMSTRONG: No objection.

19 MR. YOUNG: No objection, Your Honor.

20 THE COURT: It'll be admitted. It can be  
21 published.

22 BY MR. LACEY:

23 Q. So this is the front part of the red  
24 Expedition; is that correct?

25 A. Correct.

1 Q. And there is a cell phone on the seat there;  
2 is that correct?

3 A. Yes, correct.

4 Q. Was that phone there when you first saw the  
5 vehicle or somebody else placed that there or do  
6 you know?

7 A. We -- as far as when we cleared the vehicle,  
8 we didn't put hands-on the vehicle, as far as we  
9 didn't search anything. We just make sure there  
10 was no bodies in it, and we were going to turn over  
11 everything to FBI so they can search.

12 Q. Okay. And next 63-I, we'd ask the witness be  
13 shown that, please.

14 Can you identify this for us?

15 A. Yes. That's the black Escalade that was also  
16 stopped by other agents.

17 Q. And where was that vehicle positioned in  
18 relationship to the red Expedition and your  
19 vehicle?

20 A. That was a ways back from where we were, not  
21 too far. Within, I mean, if you see in one of the  
22 pictures you showed earlier, you can kind of tell  
23 where they were situated at.

24 MR. LACEY: We'd offer 63-I at this time.

25 MR. COOPER: No objection.



1 MR. ARMSTRONG: No objection.

2 MR. YOUNG: No objection, Your Honor.

3 THE COURT: It can be admitted, can be  
4 published.

5 BY MR. LACEY:

6 Q. And in this 63-I, the people that were in  
7 there, the passenger and driver, were already taken  
8 out of there?

9 A. Yes. At that time the scene was already  
10 considered safe, and special agents were doing what  
11 they were doing, and I was just taking pictures of  
12 the scene in general.

13 Q. Okay. 63-J, we'd ask the witness be shown  
14 that.

15 Can you identify this for us?

16 A. That's a picture of the rear side of the black  
17 Escalade or Cadillac.

18 MR. LACEY: We'd offer 63-J at this time.

19 MR. COOPER: Can we approach Your Honor?

20 (The following proceedings occurred at the  
21 bench.)

22 MR. COOPER: My objection is, this is not  
23 how the guns were found. This is after they've  
24 been unloaded and put out there for viewing on the  
25 tailgate, so I don't think it's relevant, and I

1 think where they're found is relevant, but this  
2 photo is not relevant.

3 MR. LACEY: We'll have other testimony.  
4 This is just simply weapons that were found in the  
5 vehicle. We can clarify it through this witness,  
6 if he can, that he didn't know where they were  
7 found, that they were placed there for  
8 photographing.

9 THE COURT: Okay. Objection is overruled.  
10 (End of bench conference.)

11 THE COURT: The objection is overruled.  
12 It can be admitted, can be published.

13 BY MR. LACEY:

14 Q. Sir, who took this photograph?

15 A. I did, sir.

16 Q. Okay. And at the time this photograph was  
17 taken, were these weapons that we see in the  
18 photograph moved from someplace inside the vehicle  
19 and put on the tailgate?

20 A. I believe so, yes.

21 Q. Are you familiar with weapons?

22 A. Somewhat.

23 Q. Can you tell us what type these two are?

24 A. Well, both are -- one's an AK high-powered  
25 weapon, and the other is like --

1 Q. The other is what?

2 A. One is an AK-47 type of weapon. The other one  
3 looks like it's an AR-15, M-4, M-16 type of weapon.

4 Q. We'd ask the witness be shown 63-K for  
5 identification.

6 Can you identify this for us?

7 A. That's a picture of the same thing, in the  
8 rear. That's two -- I see two magazines with  
9 rounds, ammunition in them, and there is the --  
10 another AR-15 or the same.

11 As far as that picture goes, like, agents were  
12 putting stuff there, and I was just taking  
13 pictures --

14 Q. For you to photograph.

15 MR. LACEY: We'd offer 63-K at this time.

16 MR. COOPER: No objection, Judge.

17 MR. ARMSTRONG: Nothing.

18 MR. YOUNG: No objection, Your Honor.

19 THE COURT: It can be admitted, can be  
20 published.

21 BY MR. LACEY:

22 Q. And sir, you mentioned magazines. We see in  
23 the center of the photograph a weapon going across  
24 the screen; is that correct?

25 A. Yes.

1 Q. And the two magazines there, are you familiar  
2 with magazines and these in particular as to what  
3 kind of weapon they would go with?

4 A. They're similar to like the weapons we carry.  
5 For example, like an M-4, the big magazine there  
6 looks like a 30-round magazine.

7 Q. Slow down a little bit.

8 A. Okay.

9 Q. Okay. Go ahead. So the bigger one is for  
10 what now?

11 A. The bigger magazine appears to be a possibly  
12 30-round type magazine.

13 Q. Did you say 30 what?

14 A. 30 rounds.

15 THE COURT: 30.

16 THE WITNESS: 30.

17 BY MR. LACEY:

18 Q. I can't hear.

19 A. I apologize.

20 Q. And the other one, the smaller magazine, can  
21 you tell from that picture how many bullets would  
22 be able to be put in that?

23 A. That appears to be a 20-round, two-zero,  
24 magazine.

25 Q. We'd next show the witness Exhibit 63-L.

1           Can you identify this for us?

2   A.   It's the same area.  I guess another weapon  
3   was being placed there.

4   Q.   And this is in the same black Escalade; is  
5   that correct?

6   A.   Correct.

7           MR. LACEY:  We'd offer 63-L at this time.

8           MR. COOPER:  No objection.

9           MR. ARMSTRONG:  No objection.

10          MR. YOUNG:  No objection, Your Honor.

11          THE COURT:  It can be admitted, can be  
12   published.

13   BY MR. LACEY:

14   Q.   Now, sir, the weapons we see here, how many  
15   rifles can you see here, the AKs, or can you  
16   describe them for us?  Are there two or three?  How  
17   many are in this photograph?

18   A.   There appear to be three rifle-type weapons.

19   Q.   In addition to the weapons, there are some  
20   things that appear off to the left.

21          Can you tell what they are?  Are they articles  
22   of clothing, or can you tell?

23   A.   I can't.

24   Q.   If you can't tell, don't worry about it.

25   A.   I can't tell.

1 Q. Sir, after the Expedition was stopped by  
2 yourself and other members of your BORTAC team and  
3 you took these photographs, what other involvement  
4 did you have after this?

5 A. After --

6 Q. If any.

7 A. After that we went back to the station and  
8 started writing our reports.

9 Q. Okay. In your report, did you identify which  
10 persons were positioned where inside the red  
11 Expedition?

12 A. Yes.

13 Q. And do you have a copy of your report in front  
14 of you?

15 A. Yes.

16 Q. Did there come a time -- well, first off, did  
17 there come a time when you were -- when you  
18 prepared the report, did you place in your report  
19 the persons as you believed that they were  
20 positioned inside the car?

21 A. Yes.

22 Q. Did you later make any amendments or changes  
23 to your report as to who was positioned where  
24 within the car?

25 A. Yes. Two months later, I made an amendment as

1 to where an individual was situated as far as  
2 placement in the vehicle.

3 Q. Who did you have in your original report  
4 positioned where within the vehicle?

5 A. Initially, I had Ardawwn Bryant as being the  
6 front passenger.

7 Q. Ardawwn Bryant?

8 A. Correct.

9 Q. Okay. And the driver?

10 A. And driver as a Jerome Ranger.

11 Q. How is it spelled?

12 A. J-e-r-o-m-e, first name, Jerome.

13 Q. And who did you have in the back of the  
14 vehicle in your original report?

15 A. In the original report, Tucker, Jerome; and I  
16 can't really pronounce the second name, Damond  
17 Reagan.

18 Q. How do you spell the last name?

19 A. R-e-a-g-a-n.

20 Q. Now, you mentioned you made some changes to  
21 your report. What did you change at that point and  
22 why did you make those changes?

23 A. It was brought to my attention by Special  
24 Agent Jon Edwards there might possibly be a mixup  
25 with the individuals as far as to their seating

1 arrangements.

2 Q. After he said that to you, what did you do to  
3 determine whether or not your original report was  
4 accurate?

5 A. I went back and looked at pictures and  
6 realized that I did, in fact, make a mistake as far  
7 as writing the wrong name as far as who was sitting  
8 on the front passenger seat.

9 Q. And what picture -- what pictures did you go  
10 back to to make that determination?

11 A. The pictures you were showing.

12 Q. The one that I pulled away later --

13 A. Yes.

14 Q. -- that we didn't publish? And tell us how  
15 you positioned the people after they were taken  
16 from the vehicle that would have assisted you later  
17 in determining who was positioned where within the  
18 vehicle?

19 A. If I remember correctly, as the driver was  
20 taken out and he walked back towards us and I put  
21 hands-on, he was placed inside, as you saw in the  
22 picture, and the front passenger was placed right  
23 next to him, left side, next to him, and so forth  
24 with the next individuals as they were coming out.

25 And when we were writing our report, I didn't



1 look at any pictures. It was just based on names  
2 that we had written down, and I kind of got the  
3 names mixed up.

4 MR. LACEY: Okay. I have no further  
5 questions.

6 THE COURT: Mr. Cooper?

7 MR. COOPER: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. COOPER:

10 Q. Good morning.

11 A. Good morning. How are you doing, sir?

12 Q. Thank you. I'm fine. I just have a few  
13 questions for you.

14 The stop of the two vehicles was at milepost  
15 194?

16 A. The stop of the red Ford Expedition happened  
17 around mile marker 195.

18 Q. 195. Okay. Was the other one at 194?

19 A. That was a few, like, it was -- I can't really  
20 tell you what the distance was, but it wasn't too  
21 far back from where we were.

22 Q. And are you stationed in Tucson?

23 A. No, in El Paso.

24 Q. In El Paso. Do you know how far, for  
25 instance, 194 is from the heart of Tucson,

1 downtown?

2 A. (Shaking head.)

3 Q. Don't know that?

4 A. No.

5 Q. Okay. There's a stamp on the photographs that  
6 indicates what time the photographs were taken; is  
7 that correct?

8 A. Yes.

9 Q. Okay. After the stop, how much time elapsed  
10 before you started taking photos? Do you  
11 remember?

12 A. It was in -- not a lot of time passed by once  
13 the subjects were secured and they were placed in  
14 the vehicle to be transported. During the time  
15 they were secured, I was already taking pictures.

16 Q. So within 10 minutes?

17 A. Approximately.

18 MR. COOPER: Okay that's all I have.

19 Thank you.

20 CROSS-EXAMINATION

21 BY MR. ARMSTRONG:

22 Q. Good morning.

23 A. Good morning, sir.

24 Q. I just have a few questions for you too.

25 Do you know whether the location where the

1 vehicles were stopped, the Ford and the Cadillac,  
2 was it north or south of the I-8 interchange, if  
3 you know where the I-8 interchange is?

4 A. I don't recall, sir. I'm somewhat familiar,  
5 but not to where I can tell you exactly.

6 Q. Do you know where the town of Casa Grande is.  
7 On the -- here in central Arizona?

8 A. I've been there.

9 Q. Okay. Did you see Casa Grande that day when  
10 you pulled these two cars over? Were you in the  
11 Casa Grande area?

12 A. We were in that area, yes.

13 Q. Okay. Were you north or south of Casa Grande,  
14 if you know?

15 A. I apologize.

16 THE COURT: North.

17 MR. ARMSTRONG: You say north?

18 THE COURT: It's actually west, but north.

19 MR. ARMSTRONG: Yeah, that east/west thing  
20 is very confusing.

21 BY MR. ARMSTRONG:

22 Q. Let me ask you this. There is a Dairy Queen  
23 in Casa Grande.

24 THE COURT: That's right on the Florence  
25 road, milepost 194.

1 BY MR. ARMSTRONG:

2 Q. We all know where that's at. Maybe you don't  
3 because you're not from here. I'll move on.

4 You were involved in pulling over the red  
5 vehicle, the red Ford Expedition?

6 A. Correct.

7 Q. And that happened without incident, didn't  
8 it? I mean, there was no -- the vehicle didn't run  
9 from you or try to elude you?

10 A. Correct.

11 Q. Just pulled over into the middle of the road?

12 A. Correct.

13 Q. And at that time there was construction going  
14 on, wasn't there?

15 A. I believe so, yes.

16 Q. Did you see -- and you were not involved in  
17 pulling over the black pickup truck, were you?

18 A. No.

19 Q. Did you have a conversation with anyone inside  
20 the black pickup truck?

21 A. No.

22 MR. ARMSTRONG: Thank you. I have nothing  
23 further.

24 CROSS-EXAMINATION

25 BY MR. YOUNG:

1 Q. Sir, you showed us photographs of three  
2 different rifles?

3 A. Yes.

4 Q. And if I count correctly, we also saw three  
5 different rifle magazines?

6 A. Yes.

7 Q. And there was a 30-round ..223 magazine?

8 A. That's what it looked like.

9 Q. There was another that looked like a 20-round  
10 ..223 magazine as well?

11 A. Correct.

12 Q. And in the AK-47 variant, there was what  
13 appeared to be a 30-round 7.62x39 AK-47 magazine?

14 A. From looking at it, that's what it appears to  
15 be.

16 Q. It appears to be a 30-round magazine; right?

17 A. Correct.

18 Q. And those were the three magazines that were  
19 associated with those three rifles?

20 A. I believe so.

21 Q. Okay. And those three rifles, they were found  
22 in the black Escalade?

23 A. Correct.

24 MR. YOUNG: That's all I have, Your Honor.

25 MR. LACEY: No further questions.

1           THE COURT: If the jurors have any  
2 questions, please place them in writing. There is  
3 at least one.

4           (The following proceedings occurred at the  
5 bench.)

6           THE COURT: "The place they were stopped  
7 is about 60, 65 miles from the center of Tucson."

8           "AK-47, AR-15s, are these civilian  
9 versions?"

10          I don't know if he checked them for that.

11          MR. LACEY: I don't know either.

12          MR. COOPER: What?

13          THE COURT: "Are they civilian versions?"

14          "Are they semiautomatic, or are they  
15 altered to full automatic?"

16          "Were there any rounds in the rifles?"

17          Does he know the answer to those  
18 questions.

19          MR. LACEY: I don't know that he would,  
20 but I don't know.

21          MR. YOUNG: Somebody would.

22          MS. HOPKINS: He might know the last one.

23          MR. LACEY: We have other witnesses  
24 coming, but whether he knows, I don't know. I  
25 guess we can ask him.

1 THE COURT: Do you want me to ask him?  
2 I'll ask him.

3 MR. COOPER: Which part?

4 THE COURT: First I'll ask if these are  
5 civilian versions of the AK-47 and AR-15, and if he  
6 doesn't know, I won't ask him anything else.

7 MR. COOPER: Okay.

8 (End of bench conference.)

9 THE COURT: Sir, I have a couple of  
10 questions from the jurors.

11 The AK-47 and AR15s, were these civilian  
12 versions of the weapons?

13 THE WITNESS: I don't know. I didn't put  
14 hands-on or look at them, but as far as AK-47s,  
15 from what I'm aware of, I don't think those are  
16 civilian.

17 THE COURT: All right.

18 THE WITNESS: I don't know, sir.

19 THE COURT: You didn't test them to see or  
20 check them?

21 THE WITNESS: Correct.

22 THE COURT: Didn't check to see if they  
23 were loaded or not loaded?

24 THE WITNESS: I didn't put hands-on.

25 THE COURT: All right. Any further

1 questions based upon the jurors' questions?

2 MR. LACEY: No, Your Honor.

3 MR. COOPER: No.

4 MR. ARMSTRONG: May I just follow up with  
5 something?

6 FURTHER EXAMINATION

7 BY MR. ARMSTRONG:

8 Q. Agent, you did not locate those weapons within  
9 the vehicle did you?

10 A. Correct.

11 Q. You were just a photographer?

12 A. I was taking pictures, correct.

13 MR. ARMSTRONG: Thank you.

14 THE COURT: You're free to go.

15 THE WITNESS: Thank you.

16 JONATHAN OMAN, WITNESS, SWORN

17 THE CLERK: Thank you. Please take a  
18 seat.

19 THE COURT: Sir, the Rule has been invoked  
20 in this case. That means, except during the time  
21 that you're testifying, you must remain outside the  
22 courtroom, and you are only allowed to discuss your  
23 testimony with the attorneys involved in the case.

24 THE WITNESS: Yes, sir.

25 THE CLERK: Please state your name for the



1 record and spell your last name.

2 THE WITNESS: It's Jonathan Oman, and  
3 that's spelled O-m-a-n.

4 THE CLERK: Thank you.

5 THE COURT: You may proceed.

6 MR. LACEY: Thanks.

7 DIRECT EXAMINATION

8 BY MR. LACEY:

9 Q. Who are you employed by, sir?

10 A. U.S. Border Patrol.

11 Q. In what capacity?

12 A. I'm with the tactical unit, BORTAC, out of San  
13 Diego.

14 Q. And your training or law enforcement training  
15 or military training prior to going -- you've been  
16 with border patrol for how long now, BP for how  
17 long?

18 A. It would be 10 years.

19 Q. And prior to that?

20 A. I was seven years Marine Corps.

21 Q. I want to direct your attention back to March  
22 2nd of last year.

23 Were you involved in some stopping of vehicles  
24 on I-10 back on March 2?

25 A. Yes, sir.

1 Q. And what vehicle or vehicles were you involved  
2 with personally as far as the stop was concerned?

3 A. It would have been the black Escalade.

4 Q. And were you the one immediately pulling  
5 behind the vehicle to stop it, or was that some  
6 other vehicle?

7 A. No, it was the vehicle that I was in.

8 Q. Were you by yourself or with others?

9 A. No, I was with two other agents.

10 Q. And did the vehicle pull over then, when you  
11 put on your lights?

12 A. Correct.

13 Q. What happened then?

14 A. At that point, yeah, they immediately yielded  
15 into the median of the highway. Based on what we  
16 received, they were --

17 Q. Without going into what you received, what did  
18 you do?

19 A. We conducted a vehicle assault on that  
20 vehicle.

21 Q. What does that mean?

22 A. That is a tactic we use if they're armed and  
23 dangerous subjects, and if employed properly, the  
24 way we train, it will mitigate any chance of  
25 individuals using weapons against us.

1 Q. And what process do you go through in order to  
2 make that happen, to keep things safe?

3 A. Well, we -- it requires a rather aggressive  
4 posture. We pulled up next to the vehicle. The  
5 agent in the back, Agent Jimenez, he had -- we  
6 pulled up parallel along with the vehicle,  
7 instructed Agent Jimenez in the back cab of our  
8 vehicle to keep a weapon raised at all the  
9 individuals, all the subjects in the rear row of  
10 the Escalade. And then I had a weapon on the  
11 subjects in the front, the driver and the front  
12 passenger.

13 Q. And what did you ask or did you ask the  
14 passengers or the persons inside the vehicle to do  
15 when you were making this approach?

16 A. At that point, we instructed them to get their  
17 hands up on the roof of the vehicle so we could  
18 clearly see their hands and you keep them up  
19 there. They all complied.

20 Q. After that, what happened next?

21 A. At that point, I instructed Agent Hernandez,  
22 who was driving, to maintain a weapon on the front  
23 two individuals, the driver and the passenger. I  
24 got out of the vehicle, walked around the passenger  
25 side of my vehicle, got in the front of their

1 vehicle.

2 I kept a weapon on the driver. I instructed  
3 them to keep their hands up on the roof. They all  
4 complied. And then I instructed Agents Jimenez and  
5 Hernandez to get out and start one by one taking  
6 subjects out of the vehicle in a contact cover  
7 posture, meaning as each individual comes out of  
8 the vehicle, one agent is assigned cover while the  
9 other agent goes empty hands, hands-on, to search  
10 and secure the subject, and we did that one by one.

11 Q. Were you involved in that process at all?

12 A. No. I held -- while they were dealing with  
13 one passenger at a time, I was -- my focus was on  
14 mainly the driver, but I was basically responsible  
15 for everybody else in that vehicle.

16 Q. Who was in charge of your particular unit that  
17 was taking on this vehicle on the side of the road,  
18 on I-10?

19 A. It would have been me.

20 Q. And you mentioned the driver. Did you have  
21 any involvement in getting the driver out of the  
22 vehicle or doing anything by way of a patdown  
23 afterwards?

24 A. Yes. Once those two agents had all the  
25 subjects in the rear seat out and searched and

1 secured and then the passenger, I came around and I  
2 had, I don't remember which one, what agent covered  
3 for me while I went hands-on the driver as he  
4 exited the vehicle, did a brief search of his  
5 person before securing him.

6 Q. And when you say you did a search of his  
7 person, was that a patdown?

8 A. Yes, it was. It was. And due to -- he had  
9 some baggy clothes on, so you check the cuffs of  
10 the pants, and I -- and that's when I noticed he  
11 had what appeared to me an impaired -- a physically  
12 impaired right leg.

13 Q. What do you mean by that?

14 A. Well, it just -- it was --

15 MR. ARMSTRONG: Objection. Relevance.

16 THE COURT: Overruled.

17 A. It just -- it seemed, compared to the left  
18 leg, it was much thinner, I guess. It just struck  
19 me as physically impaired.

20 Q. Okay. After you did this patdown, did you  
21 inspect the vehicle at all for its contents?

22 A. We did a brief search of the vehicle. We  
23 weren't going to start digging into the vehicle. I  
24 was going to leave that for the investigators  
25 arriving on scene. I already saw two weapons plain

1 sight.

2 Q. Do you recall what weapons those were that you  
3 saw in plain sight?

4 A. Yes, it was -- it appeared to me one was an  
5 M-16, and the other one, in the report I described  
6 it as a Kel-Tec-type long rifle, but I was unsure  
7 of the make. And there was one full magazine of  
8 .223 ammunition.

9 Q. Of what kind?

10 A. .223 or .556, same thing.

11 Q. And that would fit which particular weapon?

12 A. It would definitely fit that M-16. The other  
13 one I'm not sure.

14 Q. How many people total were in the vehicle?

15 A. Five.

16 Q. Two in the front, three in the back?

17 A. Correct.

18 Q. Did you prepare any report about how the  
19 persons were dressed that were in the vehicle, how  
20 they were clothed?

21 A. Yes. Yes, I have it in the report here.

22 Q. And do you have that in front of you --

23 A. Yes, I do.

24 Q. -- if you need to refresh your recollection?

25 Okay. The driver, how was he dressed, other

1     than the baggy pants you told us about?

2     A.   Right.  One moment.  Sorry.

3             I have here the driver wore a white T-shirt,  
4     and upon a brief search appeared to have a  
5     physically impaired right leg.  So white T-shirt  
6     was all I had.  I didn't describe the pants.

7     Q.   And the front passenger of this black  
8     Escalade?

9     A.   Front passenger seat wore a black T-shirt and  
10    had tattoos on his neck.

11    Q.   And the rear seat, starting from left to  
12    right, if you had it broken down that way?

13    A.   Right.

14    Q.   And maybe behind the -- behind the driver's  
15    side first, and then working across, if you have it  
16    that way.

17    A.   I think I described them as they were coming  
18    out of the vehicle, which would have been on the  
19    passenger side.

20            I first instructed the right rear passenger to  
21    exit the vehicle.  This subject was wearing gray  
22    sweatpants and a white T-shirt.  Second subject  
23    wearing all black, had dreadlocks.  Third subject  
24    in the left rear passenger, so behind the driver,  
25    was wearing a white tank top.

1 Q. Did you take down any personal information  
2 about these persons, their names or any of that  
3 kind of detail?

4 A. No, sir. With this situation, my concern was  
5 just to secure the scene, make a safe scene for  
6 investigators.

7 After determining that we had the right  
8 vehicle with the license plate, I didn't  
9 investigate further on identifications.

10 Q. So at this point in time, you're not able to  
11 give us the names of the persons that were in the  
12 vehicle? Is that --

13 A. No, sir.

14 Q. Did you view any photographs of the persons  
15 that were inside the vehicle?

16 A. Yes.

17 Q. After they had been taken out?

18 A. Yes.

19 Q. And just for the record, 65-H -- and for  
20 identification purposes only, I'm not going to  
21 offer this into evidence at this time, but for  
22 identification, 65-H, can you identify the two  
23 persons that are depicted here, were they two of  
24 the people that were inside of the Escalade that  
25 you had stopped?



1 A. Right. Unfortunately my memory is hazy on the  
2 faces, on most of the faces. However, the one in  
3 the back there wearing black with the locks on the  
4 back, I do recognize him. I remember he sat in the  
5 middle. He was the rear middle passenger.

6 Q. Okay. And next --

7 MR. ARMSTRONG: Your Honor, may we  
8 approach?

9 (The following proceedings occurred at the  
10 bench.)

11 MR. ARMSTRONG: Okay. That photograph is  
12 plainly visible to the jury.

13 THE COURT: I'm sorry?

14 MR. ARMSTRONG: The jurors can all see  
15 that photograph from the witness' monitor.

16 THE COURT: They can't see that well.

17 MR. ARMSTRONG: The folks on the end are  
18 looking over at it.

19 MR. LACEY: I don't know. I'm not going  
20 to put this in evidence at this time, but I want  
21 them to establish --

22 MR. ARMSTRONG: But it's visible to some  
23 of the jurors.

24 MR. LACEY: I'm not concerned about --

25 THE COURT: Whoa, whoa, whoa, whoa, whoa.

1 MR. LACEY: I'm sorry.

2 THE COURT: How about you guys agree who  
3 was where and be done with it?

4 MR. LACEY: Okay.

5 THE COURT: Think about it.

6 MR. ARMSTRONG: Okay. We can talk about  
7 that later.

8 THE COURT: Let's go ahead and --

9 MR. ARMSTRONG: I imagine we probably  
10 will.

11 MR. YOUNG: I think Mr. Armstrong's point  
12 is the witness' monitor was facing the jury.

13 THE COURT: I got it. So rather than have  
14 that problem, let's just agree who is where and be  
15 done with it. All right? Think about it. Let me  
16 know.

17 We'll take our lunch break.

18 MR. LACEY: All right.

19 MR. YOUNG: We already have photos --

20 THE COURT: We're going to take our lunch  
21 break. We're going to take our lunch break. You  
22 guys decide.

23 MR. ARMSTRONG: What are you having?

24 THE COURT: Peanut butter and jelly and  
25 potato chips.

1 MR. ARMSTRONG: Plain?

2 THE COURT: Yes.

3 (End of bench conference.)

4 THE COURT: I know it's time to take a  
5 break when the attorneys ask me what I'm having for  
6 lunch, so we're going to take our lunch break.

7 We'll start back at 1:30. 1:30. Remember  
8 the admonitions I've given you before.

9 THE WITNESS: Yes, sir.

10 (The jury exits the courtroom.)

11 (Off the record.)

12 THE COURT: Show the absence of the jury,  
13 the presence of all counsel and the defendants.

14 At sidebar counsel objected to possibly  
15 one of the jurors being able to see the photograph  
16 from where they're sitting, so let's find out.

17 Can you put a photograph back up on there?

18 THE COURT: I can see it.

19 MR. LACEY: You can or cannot?

20 THE COURT: I can. I still can. At least  
21 from this seat I can. If I turn it this way, you  
22 can't see it.

23 Now, I suggested to counsel, since there  
24 is a desire not to show the defendants in the cage  
25 or handcuffed on the side of the road that they

1 might want to discuss stipulating who was where and  
2 be done with it.

3 Let me know at 1:30. Okay?

4 (Off the record.)

5 (The jury enters the courtroom.)

6 THE COURT: Show the jurors returning to  
7 the courtroom, the presence of all counsel and the  
8 defendants.

9 You may continue.

10 MR. LACEY: Thanks, Your Honor.

11 And Your Honor, for the record, I talked  
12 to counsel. As far as the Cadillac Escalade, we're  
13 going to stipulate as to who was positioned where  
14 in the vehicle.

15 THE COURT: All right.

16 MR. ARMSTRONG: I don't agree.

17 MR. LACEY: I'm sorry. The Expedition.  
18 Sorry.

19 THE COURT: The Expedition.

20 MR. LACEY: Yes, Judge.

21 THE COURT: Go ahead.

22 MR. LACEY: Okay. The driver of the red  
23 Ford Expedition was Jerome Ranger. He wouldn't --  
24 the witness wouldn't know this. This is just a  
25 stipulation between parties.

1           The right passenger was Ghermon Tucker,  
2   and we have two other -- we won't go into the -- we  
3   have Ardawnn Bryant in the rear seat of the  
4   vehicle, and Damond Reagan was also in the rear  
5   seat of the red Ford Expedition.

6           THE COURT: A stipulation means that the  
7   lawyers agree that that's a proven fact that need  
8   not produce any further evidence about that.  
9   You're to take it as a proven fact.

10          Go ahead, Mr. Lacey.

11          MR. LACEY: Thanks, Your Honor.

12   BY MR. LACEY:

13   Q.   Sir, after you secured the people and made the  
14   observations you told us about this morning, did  
15   have you any further involvement in this particular  
16   matter?

17   A.   Yes, sir.

18   Q.   After the stop on the highway?

19   A.   Yes, sir. We transported those individuals,  
20   only the passengers and driver in the Escalade, in  
21   our border patrol service vehicle to Casa Grande  
22   station.

23   Q.   And at that time they were turned over to  
24   whom?

25   A.   I believe it was FBI.

1 Q. Okay. Was that then the end of your  
2 involvement in this matter?

3 A. Yes, sir.

4 MR. LACEY: No further questions.

5 CROSS-EXAMINATION

6 BY MR. COOPER:

7 Q. Good afternoon. I just have a couple  
8 questions for you.

9 You were -- you're stationed in San Diego?  
10 That's your main place?

11 A. Yes, sir.

12 Q. But you were in the Tucson area working on  
13 March 2nd of 2011. Is that fair to say?

14 A. Yes, sir.

15 Q. Okay. And your entire team?

16 A. No. We had detachments of agents from all  
17 over the southern border working in Tucson at that  
18 time.

19 Q. Okay. And you had been here for a while, but  
20 are you part of -- is the BORTAC sort of like a  
21 SWAT team?

22 A. Yeah, that's about the closest description,  
23 yes, sir.

24 Q. Okay. And how many members on the BORTAC  
25 team?

1 A. Nationwide, it's around -- it's around 150,  
2 150 agents.

3 Q. And the team that you're on has how many  
4 agents?

5 A. In San Diego we're at about 21 agents.

6 Q. And were all of them here in Tucson?

7 A. No, sir.

8 Q. Okay. So there were BORTAC agents from all  
9 over here in Tucson at the time?

10 A. Yes, sir.

11 Q. Okay. And you learned that you were going to  
12 assist the FBI on March 2nd sometime after three  
13 o'clock in the afternoon; is that fair?

14 A. Pretty close to four p.m., yes.

15 Q. Close to four. And I think the actual stop  
16 was made around 4:15, 4:13 p.m.

17 A. That sound -- sounds correct, yes, sir.

18 Q. So you were in action within 15, 20 minutes of  
19 when you learned that you were going to be in  
20 action?

21 A. Yes. It happened pretty quickly. Yes, sir.

22 MR. COOPER: That's all that I have.

23 Thank you.

24 THE COURT: Mr. Armstrong?

25 MR. ARMSTRONG: Thank you, Your Honor.

## CROSS-EXAMINATION

BY MR. ARMSTRONG:

Q. Can you -- good afternoon?

A. Good afternoon, sir.

Q. Can you tell me the time of day that you pulled over the Cadillac off of -- off of the interstate?

A. It was probably very shortly after four p.m.

Q. Do you have any way of knowing a more precise time? Did you write a report?

A. The report here, the most precise time I have here, sir, is at 3:48 p.m., one of the agents, a BORTAC agent from Tucson sector --

Q. I'm going to stop you there. That's not the time you pulled over the vehicle.

A. No, it isn't, and so -- that's the only time that I have in this report, okay, and as memory serves, it happened very shortly after that, so I'm sorry. I do not have an actual time of the pullover.

Q. Do you know the mile marker or the location here in -- on that interstate where they were pulled over, where that vehicle was pulled?

A. I-10 westbound around mile marker 200.

Q. Around 200? All right.



1 A. Near -- yeah.

2 Q. Was that north or south of Casa Grande, if you  
3 know?

4 A. If memory serves, I think it was still south  
5 of Casa Grande, I believe.

6 Q. Was it north --

7 A. Unfortunately, I'm sorry, I don't know the  
8 area that well, but as I recall, I thought it was  
9 before you started hitting those Casa Grande exits  
10 in the westbound lane there on the I-10, so I  
11 thought we were still south of Casa Grande.

12 Q. Was it north -- the place where you pulled the  
13 vehicle over, was it north or south of the I-8  
14 interchange, when you turn to go home, or go to San  
15 Diego?

16 A. They would have been north.

17 Q. And you were talking about the people who were  
18 located in the vehicle when you pulled it over.

19 And you mentioned there was a tattoo on  
20 somebody's neck. That wasn't the driver's neck,  
21 was it?

22 A. No, it was not.

23 Q. And the driver was cooperative with you, was  
24 he not?

25 A. Yes, sir. They were all cooperative.

1 Q. Did you play any role in actually searching  
2 the Escalade?

3 A. No, sir, just a brief cursory search, and then  
4 that's when we -- I think it was one of my agents,  
5 Agent Hernandez, told me that he saw weapons in the  
6 back, and so I went and I did see weapons in plain  
7 sight.

8 Q. Okay. Where did you see the weapons?

9 And then shortly after that, law enforcement  
10 got in and disturbed or moved the weapons around.  
11 Would you agree with that?

12 A. They -- I would imagine they secured the scene  
13 for evidence, yes, but --

14 Q. What weapons did you observe in the vehicle  
15 before they were moved?

16 A. The M-16 and the -- I still am not sure what  
17 it is, but it's a Kel-Tec-type of assault rifle.

18 Q. You saw those two?

19 A. And a full magazine of ammunition.

20 Q. Okay. Where did you observe the two weapons?  
21 Start with the M-16, what you're calling the M-16.

22 A. Back seat driver's side.

23 Q. The back seat?

24 A. Yeah, the -- the Escalade is -- there's three  
25 rows in an Escalade. It was where all the

1 passengers, the three passengers were sitting,  
2 which I guess would be the middle row.

3 Anyways, it was there, where those individuals  
4 were sitting. The weapons were on the driver's  
5 side, as I recall.

6 Q. So the M-16 and the Kel-Tec were near one  
7 another?

8 A. One was on top of the other. The M-16 was on  
9 the bottom.

10 Q. Were they laying on the seat or on the floor?

11 A. I don't 100 percent recall, and seeing the  
12 picture that I took, I can't tell. I can't tell.

13 I thought that they were on the ground, but  
14 also I'm not a hundred percent sure on that.

15 Q. Did you speak with the driver of the vehicle?

16 A. Yes, giving instructions, get out of the  
17 vehicle, and then as a cursory search, I asked him  
18 if he had any weapons or anything on his person I  
19 needed to know about, to which he stated no, he did  
20 not.

21 And that was about it, sir.

22 Q. Did you ask him if there was any weapons in  
23 the vehicle?

24 A. No, I did not. One of the other agents asked  
25 another passenger that, to which he replied that

1     there was.

2     Q.    The reply was there was?

3     A.    That there was weapons, yes.

4     Q.    Okay.  And you didn't locate any weapons on  
5     the driver's person?

6     A.    No.

7                 MR. ARMSTRONG:  Okay.  Thank you.

8                 THE WITNESS:  Thank you.

9                         CROSS-EXAMINATION

10    BY MR. YOUNG:

11    Q.    Sir, one of these weapons you've been  
12    referring to is an M-16.

13    A.    Uh-huh.

14                 THE COURT:  Is that a "yes"?

15                 THE WITNESS:  Yes.  Sorry.  Yes, sir.

16    BY MR. YOUNG:

17    Q.    The M-16 is actually a military version of the  
18    AR-15; is that right?

19    A.    Yes.

20    Q.    And being former military, being a former  
21    Marine, you'd look at that weapon and immediately  
22    spot it or think of an M-16; right?

23    A.    I did, yes, sir.

24    Q.    And an M-16 is what you probably carried while  
25    you were in the Marine Corps?

1 A. Yes, sir.

2 Q. Did you -- it would be possible to look at the  
3 fire selector switch on the left-hand side of the  
4 receiver and identify that weapon either way as an  
5 AR-15 or an M-16?

6 A. Yes, you should be able to, yes, sir.

7 Q. And if it were the M-16, the military version,  
8 the fire selector switch would include positions  
9 for safe, semiautomatic, possibly burst fire, and  
10 fully automatic?

11 A. Yes, sir.

12 Q. And the civilian variation of that same weapon  
13 has positions for safe and semiautomatic?

14 A. Correct.

15 Q. Civilian versions do not have burst fire or  
16 fully automatic?

17 A. That is correct, yes, sir.

18 Q. And you didn't flip it over to identify the  
19 fire selector switch as being either the M-16 type  
20 or the AR-15?

21 A. I did not, sir, no.

22 Q. So as you look at the weapon by its  
23 appearance, it could either be an M-16 or it could  
24 be an AR-15?

25 A. That is correct, yes it could.

1 MR. YOUNG: Okay. That's all I have, Your  
2 Honor.

3 MR. LACEY: No further questions.

4 THE COURT: If the jurors have any  
5 questions, please place them in writing. I think  
6 there is at least one.

7 Counsel?

8 (The following proceedings occurred at the  
9 bench.)

10 THE COURT: "The difference in your mind  
11 between a long rifle and an assault rifle?"

12 MR. ARMSTRONG: I don't --

13 THE COURT: Okay. We'll find out.

14 (End of bench conference.)

15 THE COURT: Sir, I have a question from  
16 one of the jurors.

17 THE WITNESS: Yes, sir.

18 THE COURT: Is there a difference in your  
19 mind between a long rifle and an assault rifle?

20 THE WITNESS: Oh, okay. No, actually. If  
21 I called it a long rifle at some point, I would not  
22 use that term for these weapons. A long rifle,  
23 usually that's associated with a -- like a longer,  
24 like, hunting rifle or a precision rifle used by a  
25 marksman or a sniper or something to that effect.

1           These are shorter barrel, shorter  
2 weapons. I would call those -- what I saw in  
3 there, I would call those assault rifles. If at  
4 any point I called it a long gun or a long rifle, I  
5 didn't mean that. I would -- I would categorize  
6 these as assault rifles.

7           THE COURT: Mr. Lacey, any further  
8 questions based upon the juror's questions?

9           MR. LACEY: No, Your Honor.

10          THE COURT: Mr. Cooper?

11          MR. COOPER: No, Your Honor.

12          MR. ARMSTRONG: None, thank you.

13          MR. YOUNG: No, Your Honor.

14          THE COURT: Thank you. You may step down.

15          THE WITNESS: Thank you, sir.

16          THE COURT: As we get the next witness,  
17 you may have noticed Mr. Young stands up every time  
18 he says something. That's because he has a bad  
19 back.

20          MS. HOPKINS: Your Honor, before we bring  
21 another witness to the stand, the Government's  
22 offering into evidence what's been previously  
23 marked for identification as Government's Exhibits  
24 59 and 60, copies of which have been disclosed to  
25 defense counsel.

1           Just for defense counsel's purposes, it  
2 looks like 59 starts at 3883, and I don't have a  
3 Bates stamp for --

4           THE COURT: Why don't you show them what  
5 59 and 60 are so they'll know.

6           MS. HOPKINS: The parties have come to an  
7 agreement, actually.

8           THE COURT: All right.

9           MS. HOPKINS: And the parties will  
10 stipulate that the Cadillac Escalade was registered  
11 to Ja'Cory Ranger, and the red Ford Expedition is  
12 registered to Jerome Ranger.

13          THE COURT: All right. The parties have  
14 stipulated to those facts. You may take them as a  
15 proven fact.

16          Next witness?

17          MR. LACEY: Yes, Your Honor. Thank you.

18          JOSE DOMINGUEZ, WITNESS, SWORN

19          THE COURT: Sir, the Rule has been invoked  
20 in this case. That means, except during the time  
21 that you're testifying, you must remain outside the  
22 courtroom, and you are only allowed to discuss your  
23 testimony with the attorneys involved in the case.

24          Understood?

25          THE WITNESS: Yes, sir.



1           THE CLERK: Please state your name for the  
2 record and spell your last name.

3           THE WITNESS: Jose Dominguez,  
4 D-o-m-i-n-g-u-e-z.

5           THE CLERK: Thank you.

6                         DIRECT EXAMINATION

7 BY MR. LACEY:

8 Q. Sir, you're employed by whom?

9 A. Department of Homeland Security, Customs and  
10 Border Protection, United States Border Patrol.

11 Q. And sir, you've been with the border patrol  
12 for how many years?

13 A. 15 plus, since 1997.

14 Q. Sir, did there come a time during March 2nd of  
15 last year, 2011, when you became involved in an  
16 investigation that entailed the stop of two  
17 vehicles on I-10?

18 A. Yes, I was.

19 Q. And what kind of work were you doing at that  
20 time? What unit were you assigned to back in March  
21 of last year?

22 A. In March of last year, I was assigned to the  
23 Tucson sector Disrupt unit. That's their plain  
24 clothes antismuggling unit, and we were working out  
25 of the Casa Grande station at that time.

1 Q. Did there come a time, then, when you actually  
2 got involved in stopping vehicles or after the  
3 vehicles were stopped you went to the scene?

4 A. Yes. Yes, I did.

5 Q. What was that? What did you do?

6 A. Basically we got a call from our supervisor  
7 advising us that we're going to assist the FBI in a  
8 traffic stop, and our specialized unit, you know,  
9 BORTAC, they were actual going to perform the  
10 traffic stop, and we were going to assist them.

11 What happened is that, you know, I was working  
12 out of Casa Grande. You know, I got the radio  
13 communications that they were coming up north, and  
14 you know, I got on the freeway and started  
15 following the vehicles as they attempted to make  
16 the traffic stop.

17 Q. When you -- when did you first stop the target  
18 vehicles on I-10?

19 A. I can't remember the actual exit, but they  
20 were actually just I would say east or south,  
21 southeast of the intersection of I-8 and I think  
22 I-10.

23 Q. I-8, where you shoot off to Yuma?

24 A. Yes, yes.

25 Q. What did you do once you saw the vehicle or

1 vehicles?

2 A. I got behind the caravan, and then through  
3 radio traffic I heard that they made the stop.  
4 What I did, I stopped traffic on I-10 for -- to  
5 establish a safe perimeter, and after the safe was  
6 -- the scene was secure, I went back into the  
7 median and assisted the unit on, you know, making  
8 the traffic stop.

9 Q. About how long was the traffic stop on I-10  
10 then?

11 A. Wow, that would be hard to say. Several  
12 minutes, maybe five, 10 minutes. I couldn't be  
13 sure.

14 Q. How far from the stopped vehicles were you  
15 positioned when you were able to stop the traffic?

16 A. I was south of them, and I would say maybe  
17 approximately 15, 20 yards, maybe. Maybe. I would  
18 assume.

19 Q. And what happened after the vehicles were  
20 stopped? Where did you go? What did you do?

21 A. I went into the median, and I assisted in the  
22 search of the black Escalade. I noticed at the  
23 time that nobody was taking any photographs of the  
24 actual stop or the actual search.

25 I asked one of the BORTAC guys if they wanted

1 me to do that. They told me yes. I went to the  
2 back of my vehicle and picked up my camera and  
3 started documenting the scene via photographs.

4 Q. I want to show you first Exhibit 65-A for  
5 identification.

6 Can you identify that for us.

7 A. Yes, sir, I can.

8 Q. And was that one of the photographs that you  
9 took that day?

10 A. Yes it was.

11 Q. Of the black Escalade?

12 A. Yes.

13 MR. LACEY: We'd offer 65-A at this time.

14 MR. COOPER: I have no objection, although  
15 I can't tell what side it is.

16 Is this right side up?

17 MR. LACEY: We can get some clarification.

18 MR. COOPER: Okay.

19 BY MR. LACEY:

20 Q. The photograph you're looking at there, can  
21 you tell us how that is positioned? Is this upside  
22 down from the vehicle, or how does this come across  
23 in real positioning? Was the vehicle -- was the  
24 rifle in the position as you see it here?

25 THE WITNESS: May I move this?

1 THE COURT: Yes.

2 A. Basically the black box that you see that has  
3 the wires, that would be the speaker box that  
4 extends to the back of the Escalade, or I'm sorry,  
5 the -- yeah, the Escalade. I'm sorry.

6 And the actual long arm that's there is, I  
7 believe, in between the seats, in the rear portion.

8 Q. Was that where you found the weapon back on  
9 that day, back on March 2nd?

10 A. I personally did not find the weapon. I got  
11 called in by the other agents that were performing  
12 the search, and I took the picture of the weapon  
13 the way it was, yes.

14 Q. Do you know if that was where the weapon was  
15 initially when the stop took place, or had it been  
16 moved, or do you know?

17 A. I don't know.

18 MR. LACEY: Okay. We'd offer 65-A at this  
19 time.

20 MR. COOPER: No objection, Judge.

21 MR. ARMSTRONG: None.

22 MR. YOUNG: No objection.

23 THE COURT: It can be admitted, can be  
24 published.

25 BY MR. LACEY:

1 Q. So would you explain to us again, now that  
2 everybody's able to look at the photograph, and you  
3 can point to the screen, and I think there will be  
4 some red dot or something.

5 Can you show us where the back seat of the  
6 vehicle is in relationship to this weapon that  
7 we're looking at?

8 A. It would be right here.

9 THE COURT: If you touch it, it will make  
10 a mark.

11 BY MR. LACEY:

12 Q. You have to touch the screen, if you wouldn't  
13 mind.

14 A. Is there a mouse?

15 Q. No, just touch the screen with your hand.

16 THE COURT: It looks like you broke it.

17 THE WITNESS: I'll get it taken out of my  
18 paycheck.

19 THE COURT: It's broken? Or did I unplug  
20 it? We're going to reboot. There we go.

21 (Off the record.)

22 MR. LACEY: Okay. If we don't have any  
23 red marks, then we'll just have you do it orally so  
24 we can understand.

25 As we're looking at the photograph, the

1     weapon's on the -- use -- there is an arrow there,  
2     if you want to use the arrow.

3             Where is the back seat of the car in  
4     relationship to the weapon?

5             THE COURT:  He's lost picture.

6             THE WITNESS:  Yeah.

7             THE COURT:  You guys still have it though,  
8     don't you?

9             JUROR:  Yeah.

10            MR. LACEY:  And if you can't get the  
11     picture, I'll just use a hard copy and do it that  
12     way.

13            THE COURT:  It's still there but it's not  
14     making a mark.

15     BY MR. LACEY:

16     Q.  Can you see it now?

17     A.  I can see it now.

18     Q.  As we're looking at the photograph, we see the  
19     weapon there, the assault rifle.

20            Where is the back seat in relation to that, to  
21     the left or to the right?

22     A.  It would be to the left.  That would be the  
23     back, the back seat that was folded forward.

24     Q.  Okay.  And is it -- would this particular  
25     Expedition that you were involved in inspecting and

1     photographing, were there two rows of seats, then,  
2     a front row, the driver and passenger, and then a  
3     rear seat --

4     A.    Yes.

5     Q.    -- section as well?

6     A.    Yes, sir.

7     Q.    And this photograph is behind the rear seat  
8     section?

9     A.    Yes, sir.

10    Q.    Okay. And off to the right, there's some  
11    wires and a black box. Is that a -- what is that?

12    A.    That would be a speaker, a speaker box.

13    Q.    I would ask to you look at Exhibit 65-B, as in  
14    boy.

15           Can you identify this for us?

16    A.    Yes. This is a close-up photograph of one of  
17    the assault rifles that was in the black Escalade.

18           MR. LACEY: We'd offer 65-B at this time.

19           MR. COOPER: No objection, Judge.

20           MR. ARMSTRONG: No objection.

21           MR. YOUNG: No objection, Your Honor.

22           THE COURT: It can be admitted, can be  
23    published.

24    BY MR. LACEY:

25    Q.    And sir, what is depicted in this photograph?



1 A. Basically the make, model, but more important,  
2 the serial number.

3 Q. And the serial number speaks for itself.

4 Next, 65-C, as in Charlie, we'd ask you to  
5 look at that and tell us if you can identify that.

6 A. Yes, sir. These were the magazines that would  
7 go to the assault rifles in the black Escalade.

8 MR. LACEY: We'd offer 65-C.

9 MR. COOPER: No objection.

10 MR. YOUNG: No objection.

11 MR. ARMSTRONG: No objection.

12 THE COURT: It can be admitted, can be  
13 published.

14 BY MR. LACEY:

15 Q. Where in relationship to the rifles were these  
16 two magazines with bullets in them?

17 A. That I wouldn't know.

18 Q. Okay. 65-D, we'd ask the witness be shown  
19 that, please.

20 Can you identify that for us?

21 A. Yes. This was a handgun also that was found  
22 in the black Escalade that was in the rear, the  
23 rear passenger area of the Escalade and right  
24 underneath the black covering between the pickup  
25 bed area and the seat, the rear seat.

1 MR. LACEY: We'd offer 65-D at this time.

2 MR. COOPER: No objection.

3 MR. ARMSTRONG: No objection.

4 MR. YOUNG: No objection, Your Honor.

5 THE COURT: It can be admitted, can be  
6 published.

7 BY MR. LACEY:

8 Q. Now, you mentioned that this pistol was  
9 behind -- was it the back seat of the vehicle, the  
10 Escalade?

11 A. Yes.

12 Q. Whereabouts behind the back seat?

13 A. It was -- there was another picture that I  
14 captured that had a black metal cover, trying to  
15 cover the pistol. That's where the agent  
16 instructed me that he found it, and this would be  
17 in the rear portion of the Escalade, in the  
18 passenger area.

19 Q. And to the left of the weapon that we see  
20 here, the pistol, what is that? Is that the seat?

21 A. That would be the seat. Yes, sir, that would  
22 be the seat.

23 Q. The rear seat of the vehicle?

24 A. Yes.

25 Q. We'd ask the witness be shown next 65-E,

1 please.

2 Can you identify that for us?

3 A. Yes. This is the black Escalade in question  
4 that our guys performed a traffic stop on.

5 MR. LACEY: We'd offer 65-E.

6 MR. COOPER: No objection, Judge.

7 MR. ARMSTRONG: No objection.

8 MR. YOUNG: No objection, Your Honor.

9 THE COURT: It can be admitted, can be  
10 published.

11 BY MR. LACEY:

12 Q. Next is 65-F, as in Frank.

13 Can you identify that for us?

14 A. This is the same black Escalade.

15 Q. Different vantage point?

16 A. Yes.

17 MR. LACEY: We'd offer 65-F.

18 MR. COOPER: No objection.

19 MR. ARMSTRONG: No objection.

20 MR. YOUNG: No objection, Your Honor.

21 THE COURT: It can be admitted, can be  
22 published.

23 BY MR. LACEY:

24 Q. And this, for the record, shows the right side  
25 of the vehicle, does it not?

1 A. Yes, sir, the passenger, passenger side.

2 Q. 65-G, as in George.

3 Can you identify that for us?

4 A. This is the same black Escalade in question.  
5 This is indicating the driver's side of the  
6 vehicle.

7 MR. LACEY: We'd offer 65-G.

8 MR. COOPER: No objection, Judge.

9 MR. ARMSTRONG: No objection.

10 MR. YOUNG: No objection, Your Honor.

11 THE COURT: It can be admitted, can be  
12 published.

13 BY MR. LACEY:

14 Q. And sir, when you showed us the speaker, where  
15 was that in relationship, and the rear seat, where  
16 did you have to go to take that picture?

17 A. As we're looking at this picture, the rear  
18 passenger's side door, you would open it up, and  
19 it's between the seat and the rear portion of the  
20 bed portion of the Escalade.

21 Q. And when you say the bed portion, is there  
22 actually a truck bed in the back of this vehicle?

23 A. Yes. Yes, sir. That's particular to these  
24 type of models of vehicles, that they have -- there  
25 is an access to the back of the bed area.

1 MR. LACEY: I have no further questions.

2 Thank you.

3 THE COURT: Mr. Cooper?

4 CROSS-EXAMINATION

5 BY MR. COOPER:

6 Q. Hello.

7 A. Hello, sir.

8 Q. I just have a few questions about the  
9 locations of the weapons, where you found them in  
10 the Escalade. All right?

11 A. Sure.

12 Q. You don't have the hard copy -- or the copies  
13 of the --

14 MR. COOPER: Well, could I ask that 65-A  
15 be put up on the screen, please?

16 THE COURT: For everybody to see?

17 MR. COOPER: Yes.

18 THE COURT: Okay.

19 BY MR. COOPER:

20 Q. Agent Dominguez, the rifle that you see in  
21 this photograph, I think you described previously  
22 that it is behind the rear seat, getting toward  
23 the, I guess, sort of a trunk area before the bed  
24 of the truck.

25 Is that fair to say?

1 A. Yes, I would say so, yes.

2 Q. And on this photograph, 65-A, to the left you  
3 can almost see the back of the rear seat. Is that  
4 what that is?

5 A. That would be correct, yes.

6 Q. At the far left side of the photograph?

7 A. Yes, sir.

8 Q. Okay. So this rifle is behind the four  
9 passengers who are in the vehicle; right?

10 A. Yes.

11 Q. All right. Then let me just ask you about  
12 65-C, please.

13 These -- a magazine basically contains  
14 ammunition; right?

15 A. Yes, sir.

16 Q. And these, in order for a gun to be fired,  
17 certain types of guns to be fired, the magazine has  
18 to be put into the gun?

19 A. Yes, sir.

20 Q. And these magazines, when you photographed  
21 them, were not in weapons; right?

22 A. No.

23 Q. And in fact, this is how you found them in the  
24 vehicle, or you were told this is where we found  
25 them?

1 A. Exactly.

2 Q. And so it's protocol for you to photograph  
3 evidence where it is found before it's moved;  
4 right?

5 A. Yes.

6 Q. Okay. And can you explain where these  
7 magazines are in relationship to the rifles?

8 A. Basically from this picture, I could kind of  
9 venture to guess that they are right below the  
10 front portion of the AR.

11 Q. Okay. And that's, again, getting toward the  
12 trunk area of the vehicle?

13 A. Yeah. I -- just by this picture, I wouldn't  
14 have recollection as to where, where it would be in  
15 relation to the vehicle.

16 Q. Then 65-D is a pistol that was located in the  
17 Escalade?

18 A. Yes.

19 Q. And that pistol is, again, behind the rear  
20 passenger area; right?

21 A. Yes.

22 Q. And there was a little -- I think you said  
23 there was some covering that had to be moved in  
24 order to see the pistol, right?

25 A. Yes. From my understanding, it was a black

1 metal covering that -- it's on a hinge.

2 Q. So the hinges had to be taken off?

3 A. No. The hinge would provide it to be lifted  
4 up and down.

5 Q. Okay. And again, to the left of the pistol on  
6 65-D is the rear seat; right?

7 A. Yes.

8 Q. So the four passengers or the four people who  
9 were in the vehicle were in front of this pistol;  
10 right?

11 A. From my understanding, yes.

12 Q. And then this pistol -- as you go to the right  
13 is when you get into sort of the trunk area. The  
14 beginning of the trunk is where the pistol is?

15 A. Yeah, the beginning of the trunk, what you  
16 would call the bed, bed area.

17 MR. COOPER: Thank you. That's all I  
18 have.

19 THE WITNESS: Okay.

20 CROSS-EXAMINATION

21 BY MR. ARMSTRONG:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. I also just have a real few questions for  
25 you.



1           How long was it after the vehicles were pulled  
2 over until you arrived at their location?

3 A.   I would venture maybe to say -- again, this is  
4 going to be an estimate -- maybe five minutes.

5 Q.   And the people -- you just dealt with the  
6 folks in the black pickup truck, the black  
7 Cadillac; correct?

8 A.   Yes.

9 Q.   Okay. You had nothing to do with the red --  
10 the red Expedition?

11 A.   No. I took some pictures of the red  
12 Expedition, but mainly those were outside pictures  
13 of the perimeter and maybe one or two shots of the  
14 interior of the vehicle, but that was it.

15 Q.   And as I understood from your testimony, you  
16 initially saw the cars as they were coming up on  
17 the I-8 interchange?

18 A.   They were on I-10 and they were approaching  
19 the interchange.

20 Q.   Yeah, it's on I-10, but they were coming up on  
21 the -- they were south or east of the turnoff to  
22 San Diego?

23 A.   Yes. Yes, they were.

24 Q.   So by the time the vehicles were pulled over,  
25 it would have been north of the I-8 interchange?

1 A. Exact location, I can't remember the exact  
2 location of the stop, but that was primarily my  
3 geographical remembering of the area that it was  
4 at.

5 Q. Okay. Were you north of Casa Grande by the  
6 time the vehicles were pulled over?

7 A. I wouldn't remember. I wouldn't remember.

8 Q. All right. Could I ask you to take a look at  
9 65-G, please.

10 Do you see that?

11 A. Yes, sir.

12 Q. That's the driver's side of the Cadillac.  
13 There's two rows of seats in that vehicle; correct?

14 A. Yes, sir.

15 Q. And then just a trunk compartment. Is the  
16 trunk compartment covered? I can't tell from that  
17 photograph. Is there a cover over the trunk or the  
18 bed of the truck?

19 A. Usually there is a cover on top of the bed,  
20 yes.

21 Q. Do you recall whether there was a cover on  
22 this truck?

23 A. I couldn't be exact. I couldn't be exact  
24 whether there was or not.

25 Q. All right. When you arrived at the vehicle,

1 other agents had moved at least one of the  
2 weapons. Is that safe to say?

3 When you arrived at the Cadillac, the weapons  
4 had been moved from where they were originally  
5 found?

6 A. When I arrived at the scene, they were in the  
7 process of doing a search, and as they searched the  
8 vehicle, they would call out where those weapons  
9 were, and I would go out and capture the weapon in  
10 the photograph.

11 Q. Okay. So the handgun had not been moved?

12 A. Not to my knowledge, no.

13 Q. And the handgun, again, was behind the second  
14 row, the passenger seat compartment; correct?

15 A. Yes.

16 Q. And the rifle that was seen in 65-A, that too  
17 was behind the passenger compartment?

18 A. Yes.

19 Q. And the magazines that were depicted in 65-C,  
20 those had not been disturbed, as far as you know,  
21 when you arrived to take the photograph?

22 A. I don't know. I wouldn't know.

23 Q. Okay.

24 A. I wouldn't know.

25 MR. ARMSTRONG: Okay. Thank you very

1 much.

2 THE WITNESS: Okay.

3 CROSS-EXAMINATION

4 BY MR. YOUNG:

5 Q. Sir, if you'd take a look at Exhibit 65-B, as  
6 in boy.

7 A. It's on the screen.

8 Q. That photograph identifies that particular  
9 rifle as an AR-15; is that right?

10 A. Yes, it does.

11 Q. And the AR-15, that would be the civilian  
12 version of the M-16?

13 A. I would think so, yes.

14 Q. And this particular one is manufactured by  
15 Colt?

16 A. Yes.

17 Q. And Colt holds the patent on the AR-15?

18 A. I don't know.

19 Q. I digress.

20 This particular AR-15, if you take a look at  
21 Exhibit 65-A, 65-A, if I understand correctly, is a  
22 picture of that rifle in the trunk of that vehicle?

23 A. I would say so, yes.

24 Q. And I see one of the seats is folded down, but  
25 the seats weren't folded down when the people were

1 sitting on them; right?

2 A. No.

3 Q. So in the course of searching that vehicle,  
4 somebody folded down the seat and found that rifle  
5 in the trunk of the vehicle?

6 A. I would think so, yes.

7 Q. There was also 65-D, as in dog, a handgun that  
8 was found behind the back seat, in the trunk of the  
9 vehicle?

10 A. Yes.

11 Q. And off to the left, I see what looks to be  
12 the hinge of the seat that's folded forward?

13 A. Yes.

14 Q. 65-C was pictures of two magazines that fit  
15 two different rifles; is that right?

16 A. I wouldn't be able to determine which ones  
17 they would fit.

18 Q. Now, both of these magazines appear to be  
19 standard NATO-type magazines?

20 A. Yes.

21 Q. And they hold the standard NATO 5.56 round?

22 A. Yes, I would think, yeah.

23 Q. And either of those magazines will fit in any  
24 of the NATO weapons?

25 A. I don't know.

1 Q. Okay. But there's a large number of rifles  
2 that would fit this particular magazine; is that  
3 right?

4 A. Sure.

5 Q. And these two magazines, there were two rifles  
6 that fit with these two magazines in this vehicle;  
7 is that right?

8 A. I would think they would fit, yes.

9 Q. So I guess what I'm driving at is, the vehicle  
10 had three rifles and three magazines in the  
11 vehicle; does that sound right?

12 A. Sure.

13 MR. YOUNG: Okay. That's all I have, Your  
14 Honor.

15 THE COURT: Mr. Lacey?

16 MR. LACEY: No further questions. Thank  
17 you.

18 THE COURT: If the jurors have any  
19 questions, please place them in writing.

20 You may step down.

21 THE WITNESS: Thank you.

22 THE COURT: Next witness?

23 MR. LACEY: Your Honor we have some  
24 weapons we're going to be showing next. We just  
25 want to get -- want to take about a two-minute

1 break to get them brought in here, or whatever is  
2 good for the Court.

3 THE COURT: Let's take a two-minute break.

4 (The jury exits the courtroom.)

5 (Off the record.)

6 THE COURT: Show the absence of the jury,  
7 presence of all counsel and the defendants.

8 Mr. Cooper?

9 MR. COOPER: Your Honor, the next witness  
10 is a Phoenix Police Department detective which is  
11 fine. However, we really would object to how  
12 they're going to qualify him as to why he's in Casa  
13 Grande picking up guns in an FBI case.

14 THE COURT: He was asked to come down.

15 MR. LACEY: Exactly.

16 MR. COOPER: And if that's all there is,  
17 that's fine.

18 THE COURT: We're not getting into all  
19 that other stuff.

20 MR. COOPER: All right.

21 MR. LACEY: We're not going there.

22 THE COURT: All right. They had half the  
23 state of Arizona working this case.

24 MR. COOPER: Apparently.

25 THE COURT: And Texas and part of

1 California.

2 MR. LACEY: And San Diego. Surf's up.

3 THE COURT: Bring the jurors in, Mo.

4 (Off the record.)

5 (The jury enters the courtroom.)

6 THE COURT: The record shows the jurors  
7 returned back to the courtroom, the presence of all  
8 counsel and the defendants.

9 You may call your next witness.

10 MR. LACEY: Yes, Detective Salgado,  
11 please.

12 ARNULFO SALGADO, WITNESS, SWORN

13 THE COURT: Sir, the Rule has been invoked  
14 in this case. That means, except during the time  
15 that you're testifying, you must remain outside the  
16 courtroom, and you are only allowed to discuss your  
17 testimony with the attorneys involved in the case.

18 All right?

19 THE WITNESS: Yes, sir.

20 THE CLERK: Please state your name for the  
21 record and spell your last name.

22 THE WITNESS: Arnulfo Salgado,  
23 S-a-l-g-a-d-o.

24 DIRECT EXAMINATION

25 BY MR. LACEY:



1 Q. Sir, you're employed by the Phoenix Police  
2 Department as a detective, are you not? Yes or no?

3 A. Yes, sir.

4 Q. Were you asked to assist in this particular  
5 case that resulted in seizure of weapons, among  
6 other things, back on March 2 of last year?

7 A. Yes, sir.

8 Q. Did you go to the scene where two vehicles  
9 were stopped back then?

10 A. Yes, sir.

11 Q. Do you recall what kind of vehicles they were?

12 A. Both were SUVs, an Escalade and an Expedition.

13 Q. And the colors?

14 A. The Escalade was black, black in color, and  
15 the Expedition is red.

16 Q. When you went to the scene that day, were you  
17 involved in acquiring possession of any weapons  
18 that were found in those vehicles?

19 A. Yes, sir.

20 Q. Let's start with the red Expedition first.

21 Did you have a list prepared as to what  
22 weapons you found in each of the two vehicles?

23 A. Yes, sir.

24 Q. And do you have that up there with you?

25 A. I have my own.

1 Q. Is it up here or do you need a refresher?

2 A. Yes, I'd like to have it available, if  
3 possible, so I can refresh my recollection.

4 MR. LACEY: May I approach, Your Honor?

5 THE COURT: You may.

6 BY MR. LACEY:

7 Q. Sir, is that a report that was prepared that  
8 references the weapons we're going to be talking  
9 about?

10 A. Yes, sir.

11 Q. And does that refresh your recollection as to  
12 what weapons were found at what locations?

13 A. Yes, sir.

14 Q. Or within which vehicles?

15 A. Yes, sir.

16 Q. Starting with the Expedition -- and that's the  
17 one with Jerome Ranger driving and Ghermon Tucker  
18 right passenger, front right, front passenger, what  
19 weapons were found within that vehicle?

20 A. They were handguns, sir. There a Ruger P95  
21 handgun.

22 Q. And let's start with Exhibit 80-B, as in boy,  
23 for identification.

24 THE WITNESS: I'm going to have Agent  
25 Edwards assist me, if it's okay with the Court.

1 THE COURT: Go ahead.

2 MR. LACEY: If you can bring 80-B for  
3 identification purposes to the witness.

4 BY MR. LACEY:

5 Q. Sir, can you identify that for us.

6 A. Yes, sir. That's a Glock 17 nine millimeter.

7 Q. And that was found where within the -- which  
8 vehicle again?

9 A. The Expedition, sir.

10 Q. Do you know where it was found within the  
11 vehicle?

12 A. I believe it was located in the back seat  
13 behind the passenger -- excuse me -- behind the  
14 other driver's seat on the little pocket in the  
15 back seat.

16 Q. Behind the seat?

17 A. Yes, sir.

18 Q. In the pocket?

19 A. Yes, sir.

20 Q. And what's the description of that weapon?

21 A. It's a Glock 17 nine millimeter. It has a  
22 serial number on that.

23 Q. What's that?

24 A. N as in Nancy, U as in Union, S as in Sam,  
25 513.

1 Q. And do you see that serial number on the  
2 weapon itself then?

3 A. Yes, sir.

4 MR. LACEY: We'd ask next the witness --  
5 we'd offer Exhibit 80-B, 80-B at this time.

6 MR. COOPER: No objection.

7 MR. YOUNG: No objection, Your Honor.

8 MR. ARMSTRONG: No objection.

9 THE COURT: It can be admitted, can be  
10 published.

11 That was 80-B; correct?

12 MR. LACEY: 80-B, as in boy, yes, Your  
13 Honor.

14 Perhaps the easiest way to do it would be  
15 just to have Agent Edwards hold it and walk in  
16 front of the jury to see it, unless you want them  
17 to pass it amongst themselves, but I'd just as soon  
18 do it that way.

19 THE COURT: He can hold it, not that we  
20 don't trust you guys, but --

21 MR. LACEY: And for the record, they've  
22 been checked for safety and -- to make sure, and  
23 they're also security locked.

24 BY MR. LACEY:

25 Q. Next we'd direct your attention to 81-B, as in

1 boy.

2 Sir, can you identify that for us?

3 A. That's the Taurus Millennium handgun, .45  
4 caliber, model PT145 Pro. Serial number is N as in  
5 Nancy, C as in Charles, Y as in Young, 77905.

6 Q. Sir, when you retrieved those guns that day  
7 from the Ford Expedition, were they loaded at the  
8 time? Do you recall?

9 A. They had magazines installed into the butt of  
10 the handgun, the magazine well, and there were live  
11 rounds inside the magazines, but there was not a  
12 round chambered into the weapons.

13 Q. As to both 80-B and 81-B; is that correct  
14 then?

15 A. Yes, sir.

16 Q. And do you -- from your inspection of the  
17 Expedition back on that day, where was 81-B, as in  
18 boy, located within the vehicle?

19 A. It was inside the center console, the glove --  
20 the compartment between the two passengers, the two  
21 front seats.

22 Q. Between the driver's side --

23 A. And the passenger side, yes, sir.

24 Q. -- and the passenger side?

25 A. Yes, sir.

1 MR. LACEY: We'd offer 81-B at this time.

2 MR. COOPER: No objection.

3 MR. ARMSTRONG: No objection, although I  
4 have that listed as a different item, and the  
5 witness has identified it as a Taurus.

6 THE COURT: What did you say?

7 THE WITNESS: I'm sorry, sir. That's  
8 correct. I identified it as a Taurus. It is a  
9 Ruger. My mistake.

10 MR. ARMSTRONG: No objection.

11 MR. YOUNG: No objection, Your Honor.

12 MR. LACEY: We'd ask also that that be  
13 published in the same way.

14 THE COURT: At this time we're publishing  
15 the Ruger and that's 81 --

16 MR. LACEY: B, as in boy, yes, Your Honor.

17 MR. ARMSTRONG: Can we have a moment to  
18 straighten that out. What was 81?

19 MR. LACEY: 81-B is the Ruger that we just  
20 looked at.

21 MR. ARMSTRONG: 80 was the Glock?

22 MR. LACEY: 80 is the Glock nine  
23 millimeter, yes, correct.

24 A. Sir, may I clarify something in reference to  
25 the serial number? I gave you the serial number

1 for the Taurus.

2 Q. If you wouldn't mind, please. We want the  
3 record straight.

4 A. Yes. The Ruger serial number is 317-31859.

5 Q. And that's for which gun again?

6 A. The Ruger, sir, the P95. It's a nine  
7 millimeter also.

8 Q. Okay. Thank you.

9 MR. LACEY: If you'd publish that, please.

10 BY MR. LACEY:

11 Q. Next I'm going to direct your attention to  
12 83-B, as in boy, and ask if you can identify that  
13 for us.

14 A. Yes, sir. This is the Taurus I was talking  
15 about previously.

16 Q. And can you give us the serial number for that  
17 one, again, just so it's clear on the record.

18 A. N as in Nancy, C as in Charles, Y as in  
19 Yankee, 77905.

20 Q. And where was that particular weapon found  
21 within the red Expedition back on March 2nd?

22 A. It was in the back seat, between the -- it's  
23 bucket seats, and it was tucked between the seats  
24 themselves.

25 MR. LACEY: Okay. We'd offer 83-B at this

1 time.

2 MR. COOPER: No objection.

3 MR. ARMSTRONG: No objection.

4 MR. YOUNG: No objection, Your Honor.

5 THE COURT: Can be admitted.

6 MR. LACEY: And published?

7 THE COURT: And published.

8 BY MR. LACEY:

9 Q. Sir, were there any other weapons found within  
10 that red Expedition back on that day, back on March  
11 2nd?

12 A. No, sir, not by me.

13 Q. Let's shift gears to the black Escalade. Did  
14 you have occasion to go to that particular vehicle  
15 back on March 2, along I-10, up in the Casa Grande  
16 area?

17 A. Yes, sir.

18 Q. While those are being -- while those weapons  
19 are being put together here, staying with the  
20 Expedition, were there any other pieces of  
21 equipment or things used in relationship to weapons  
22 that were found in the Expedition, the red  
23 Expedition?

24 A. Yes, sir. I located two pieces of body armor  
25 inside the vehicle.



1 Q. And where were they located, the body armor?

2 A. Just inside, in plain view.

3 THE COURT: Wait a minute. Wait a  
4 minute. Wait a minute. All that rattling. I  
5 can't hear.

6 Go ahead. Rattle. We'll just wait.

7 MR. COOPER: Excuse me. Could I ask to  
8 approach for just a minute?

9 (The following proceedings occurred at the  
10 bench.)

11 MR. COOPER: I just want to try to avoid  
12 confusion as to which vehicle we're talking about.  
13 In his report --

14 THE COURT: It's the Expedition.

15 MR. COOPER: Well, he wrote Explorer.

16 MS. HOPKINS: He did an amended report  
17 where he said Expedition.

18 MR. COOPER: The Explorer has no body  
19 armor.

20 MR. LACEY: It was in there. We have  
21 other reports. Counsel's got them. We'd be happy  
22 to retrieve them showing where he got them, and we  
23 have where that was shown.

24 MR. COOPER: I understand that. I just  
25 want to make sure that you're aware that, in his

1 original report, the body armor is in the other  
2 vehicle.

3 MR. LACEY: You can make a point out of it  
4 if you want to, but we have pictures showing it in  
5 the vehicle that we showed to the witness a few  
6 minutes ago.

7 MR. COOPER: All right.

8 MR. LACEY: The report says it.

9 MR. COOPER: I understand.

10 THE COURT: Okay. All right.

11 (End of bench conference.)

12 THE COURT: Okay. I think all the  
13 rattling is now done. You may continue.

14 BY MR. LACEY:

15 Q. Yes. You mentioned there was some body armor  
16 found within the red Expedition, did you not?

17 A. Yes, sir.

18 Q. We'd ask you be shown --

19 MR. LACEY: He had to put a tag on there.  
20 We just rattled these first, since we hadn't  
21 rattled them before we came to court today. Now  
22 we've got to put a sticker on them.

23 May I approach, Your Honor?

24 THE COURT: You may.

25 BY MR. LACEY:

1 Q. Sir, I show you Exhibit 104 for  
2 identification, and there's two parts to that. Can  
3 you identify Exhibit 104?

4 A. Exhibit 104 is camouflaged body armor that was  
5 found inside the Expedition. That's the camouflage  
6 one.

7 And then have you another colored one, kind of  
8 like army green, I guess. Also the same thing.  
9 It's body armor that was also found alongside with  
10 the first item.

11 Q. Okay. And that was located where inside the  
12 Expedition?

13 A. Between the two front seats.

14 Q. Were there any weapons found within the --  
15 we're going to shift gears here. We better take  
16 those away so we don't clutter things up there.

17 THE COURT: Are you moving to admit 104?

18 MR. LACEY: Yes, Your Honor. I was too  
19 worried about -- I'm too concerned about shuffling  
20 to the next item.

21 THE COURT: Any objection to 104,  
22 counsel?

23 MR. COOPER: No, Your Honor.

24 MR. ARMSTRONG: 104 is two different  
25 items?

1 THE COURT: Two vests.

2 MR. ARMSTRONG: No objection.

3 MR. YOUNG: (Shaking head.)

4 MR. LACEY: Thanks.

5 THE COURT: One camouflage, one olive  
6 green.

7 MR. YOUNG: No objection.

8 THE COURT: All right. They'll be  
9 admitted. They've already been published.

10 MR. LACEY: They have. We're not going  
11 there.

12 BY MR. LACEY:

13 Q. Next we'd show you -- can I approach, Your  
14 Honor?

15 THE COURT: You may.

16 BY MR. LACEY:

17 Q. I'm going to show you 78-B for identification.

18 THE COURT: E or B.?

19 MR. LACEY: B as in boy, Your Honor,  
20 78-B.

21 BY MR. LACEY:

22 Q. Sir, can you identify that for us?

23 A. Yes, sir. That's the Kel-Tec .223 rifle.

24 Q. And that was found where? Do you know?

25 A. I believe it was found inside the black

1 Escalade.

2 Q. Now, when you got to the Escalade, had any of  
3 the weapons been moved from within the vehicle  
4 before you got there?

5 A. Yes, sir.

6 Q. So you don't know where it was positioned when  
7 it was first stopped, the vehicle?

8 A. No, sir.

9 Q. Okay. When you saw that, where was it located  
10 inside the vehicle when you first approached,  
11 having had it moved before you got there? Where  
12 was it when you arrived at the Escalade?

13 A. When I first observed the weapon, it was  
14 sitting on the tailgate of the Escalade.

15 MR. LACEY: Okay. 78-B, we'd offer that  
16 at this time.

17 MR. COOPER: No objection.

18 MR. ARMSTRONG: No objection.

19 MR. YOUNG: No.

20 THE COURT: 78-B can be admitted.

21 MR. LACEY: And published?

22 THE COURT: And published. You can show  
23 it to the jury first.

24 Next time turn the weapon this way.

25 AGENT EDWARDS: Okay.

1 THE COURT: Make sure, sort of north.

2 AGENT EDWARDS: Got it, sir.

3 BY MR. LACEY:

4 Q. 77-B, we'd ask you to look at that, please,  
5 and see if you can identify that, 77-B, as in boy.

6 Can you identify that for us?

7 A. Yes, sir. That's a Norinco .762 caliber  
8 rifle.

9 Q. And is it also called something else? Is  
10 there another term for it?

11 A. It kind of looks like an AK-47-type rifle.

12 Q. And do you know where that was originally  
13 found in the vehicle, or did you later see it on  
14 the tailgate when you arrived?

15 A. On the tailgate too, sir.

16 MR. LACEY: We'd offer 77-B at this time.

17 MR. COOPER: No objection, Judge.

18 MR. ARMSTRONG: No objection.

19 MR. YOUNG: No objection, Your Honor.

20 THE COURT: It can be admitted, can be  
21 published. All right.

22 BY MR. LACEY:

23 Q. Next I'm going to ask you to look at 76 --  
24 76-B.

25 And sir, in what vehicle was this one found?

1 A. I believe it --

2 Q. Was this also the Escalade?

3 A. Yes, sir.

4 Q. And can you identify that for us?

5 A. It's an AR rifle. It's a .223 round Sports --  
6 Sportsman I think makes it.

7 Q. And is there a serial number on that?

8 A. Yes, sir. That would be Serial Number S as in  
9 Sam, P as in Paul, 354743.

10 MR. LACEY: We'd offer 76-B at this time.

11 MR. COOPER: No objection.

12 MR. ARMSTRONG: No objection.

13 MR. YOUNG: No objection, Your Honor.

14 THE COURT: It can be admitted, can be  
15 published.

16 BY MR. LACEY:

17 Q. Next we'd ask you to look at Exhibit 79-B, as  
18 in boy, and ask if you can identify that and which  
19 vehicle it came from.

20 A. Yes, sir. That's a nine millimeter CZ model  
21 75. It came from also within the Escalade, the  
22 black Escalade.

23 MR. LACEY: We'd ask that it be published  
24 at this time, Your Honor -- I'm sorry -- offered  
25 into evidence and then published.

1 MR. COOPER: No objection.

2 MR. ARMSTRONG: No objection.

3 MR. YOUNG: No objection, Your Honor.

4 THE COURT: It can be admitted, can be  
5 published.

6 BY MR. LACEY:

7 Q. Do you know where inside the Escalade this  
8 vehicle was located or this gun was located within  
9 the vehicle?

10 A. No, sir. I don't. It was also taken out of  
11 the vehicle before my arrival.

12 Q. Okay. And lastly, 82-B, as in boy. Can you  
13 identify that for us?

14 A. Yes, sir. That's a Colt Python .357 revolver.

15 Q. And the serial number on that one?

16 A. That would be E, as in Edward, 22354.

17 Q. And the same thing, you wouldn't know where it  
18 was located within the vehicle because it was  
19 already moved before you got there; is that  
20 correct?

21 A. No, sir. That's not correct. That was taken  
22 out of the glove compartment.

23 Q. Okay. The glove compartment of the black  
24 Escalade?

25 A. Yes, sir.



1 MR. LACEY: We'd offer 82-B at this time.

2 MR. COOPER: Objection.

3 MR. YOUNG: No objection.

4 MR. COOPER: No objection.

5 MR. ARMSTRONG: No objection.

6 THE COURT: You wanted to see if we were  
7 paying attention.

8 MR. COOPER: I wanted to see if I was  
9 paying attention.

10 THE COURT: It can be admitted, can be  
11 published.

12 BY MR. LACEY:

13 Q. Sir, after you retrieved these weapons from  
14 the two vehicles we've talked about, what did you  
15 do with the weapons?

16 A. I placed them in my vehicle and eventually  
17 turned them over to FBI agents.

18 Q. At what location? Is that back here in  
19 Tucson?

20 A. Yes, sir. It's back here in Tucson. I think  
21 it's Pinal County Sheriff's Office, one of their  
22 facilities.

23 Q. Okay. Did you have occasion to take any  
24 photographs that day?

25 A. Yes, sir.

1 Q. Of what?

2 A. The weapons that I recovered from the  
3 Expedition.

4 Q. Okay. I'll start with Exhibit 75-A.

5 Now, did you take any pictures of -- you  
6 mentioned that there were certain bulletproof  
7 vests, as I'll call them, inside the red  
8 Expedition; is that correct?

9 A. Yes, sir.

10 Q. And did you take this photograph?

11 A. Yes, sir.

12 Q. Do you know whether the vests had been moved,  
13 the bulletproof vests, before you took this  
14 photograph, or do you know?

15 A. No, sir, I don't.

16 Q. So they could have been someplace else within  
17 the vehicle before they were put here?

18 A. Yes, sir.

19 MR. LACEY: We'd offer 75-A at this time.

20 MR. COOPER: Judge, I have an objection as  
21 to the foundation, if he doesn't know where they  
22 were originally located.

23 THE COURT: (Indicating.)

24 (The following proceedings occurred at the  
25 bench.)

1           THE COURT: As I recall the testimony so  
2 far, they were seen in the vehicle somewhere near  
3 the seat area by one of the earlier witnesses.  
4 Exactly where they're located at this point doesn't  
5 appear to be that relevant. They certainly weren't  
6 wearing them.

7           MR. COOPER: They weren't wearing them but  
8 they were right in the middle where Mr. Tucker is.

9           THE COURT: And he's already acknowledged  
10 he doesn't know exactly where they were and that  
11 they could have been moved, so this --

12           MR. COOPER: Okay.

13           THE COURT: All right.

14           MR. COOPER: I guess it's overruled?

15           THE COURT: Yes, overruled.

16           (End of bench conference.)

17           THE COURT: The objection is overruled.  
18 It can be admitted, can be published.

19           MR. LACEY: 75-A can be published?

20           THE COURT: With the stipulation that he  
21 doesn't know exactly where they were found.

22           MR. LACEY: Of course.

23 BY MR. LACEY:

24 Q. These are the two vests we just looked at in  
25 person; correct?

1 A. Yes, sir.

2 Q. We'd next ask the witness be shown 75-B for  
3 identification.

4 Can you identify this for us, sir, 75-B?

5 A. Yes, sir. That's the back pocket to the front  
6 -- the driver's seat.

7 Q. And who took that photograph?

8 A. I did, sir.

9 Q. Back on March 2nd?

10 A. Yes, sir.

11 Q. Along the freeway on I-10?

12 A. Yes, sir.

13 MR. LACEY: We'd offer 75-A at this time.

14 MR. COOPER: No objection, Your Honor.

15 MR. LACEY: I'm sorry. 75-B, as in boy.

16 MR. ARMSTRONG: No objection.

17 MR. YOUNG: No objection, Your Honor.

18 THE COURT: It can be admitted, can be  
19 published.

20 MR. LACEY: Thank you.

21 BY MR. LACEY:

22 Q. Sir, in the middle of this photograph, what  
23 are we looking at, 75-B?

24 A. Yes, sir. There's a water bottle sitting  
25 right there, and just to the right, there's a --

1 you can see just the butt of the -- right there --  
2 of a Glock magazine, Glock handgun magazine.

3 Q. And that's right behind the driver's seat  
4 pocket, is that correct, from what you said?

5 A. Yes.

6 Q. Okay. Next we'd ask the witness be shown  
7 Exhibit 76 -- I'm sorry -- 75-C, as in Charlie.

8 Can you identify that for us?

9 A. Yes, sir. That's the Glock handgun that was  
10 in -- tucked into that pocket.

11 Q. In the side pocket?

12 A. Behind the driver's seat.

13 Q. So the same Glock we just looked at, this is  
14 another photograph of it straight on, without it  
15 being in the pocket?

16 A. That's correct.

17 MR. LACEY: We'd offer 75-C at this time.

18 MR. COOPER: No objection.

19 MR. ARMSTRONG: No objection.

20 MR. YOUNG: No objection, Your Honor.

21 THE COURT: It can be admitted, can be  
22 published.

23 BY MR. LACEY:

24 Q. We'd next direct your attention to 75-E, as in  
25 Edward. We'd ask if you can identify that for us.

1 A. That's the back seat, the bucket seats of the  
2 Expedition.

3 Q. And did you take this photograph?

4 A. Yes, sir.

5 Q. Do you know whether anything had been moved  
6 around in the vehicle before you got there?

7 A. No, sir, I don't.

8 Q. And what is depicted in this photograph?

9 A. You can see between the seats a small portion  
10 of a handgun.

11 MR. LACEY: We'd offer 75-E at this time.

12 MR. COOPER: No objection, Your Honor.

13 MR. ARMSTRONG: No objection.

14 MR. YOUNG: No objection, Your Honor.

15 THE COURT: It can be admitted, can be  
16 published.

17 MR. LACEY: Can you enlarge that for us,  
18 please.

19 BY MR. LACEY:

20 Q. In the center of this photograph, what you can  
21 see there?

22 A. Yes, sir. That's the, like, grip of a  
23 handgun, a small portion of it.

24 Q. The handle?

25 A. Yeah, the handle.

1 Q. And 75-F, please. Can you identify that for  
2 us?

3 A. That is the, like, an overview or a shot from  
4 the top going down.

5 Q. Of the same weapon we just looked at?

6 A. Yes, sir.

7 MR. LACEY: We'd offer 75-F at this time.

8 MR. COOPER: No objection.

9 MR. ARMSTRONG: No objection.

10 MR. YOUNG: No objection.

11 THE COURT: It can be admitted, can be  
12 published.

13 BY MR. LACEY:

14 Q. Next, look at 75-G, as in George, please.

15 Can you identify that for us?

16 A. Yes, sir. That's the handgun that was just  
17 shown on the previous picture that was tucked  
18 between the seats.

19 MR. LACEY: We'd offer 75-G.

20 MR. COOPER: No objection.

21 MR. ARMSTRONG: No objection.

22 MR. YOUNG: No objection, Your Honor.

23 THE COURT: It'll be admitted.

24 MR. LACEY: And published, please?

25 BY MR. LACEY:

1 Q. Sir, we see a handgun depicted here that's the  
2 Taurus .45 caliber we talked about. There is -- to  
3 the right of the pistol, there is something else.  
4 What is that there?

5 A. That is a metal magazine that was in the  
6 weapon when it was retrieved.

7 Q. And do you know how many bullets would have  
8 been inside that magazine?

9 A. Not off the top of my head, sir. I can look  
10 and find out.

11 Q. Okay. Would you do that, then.

12 A. Ten .45 caliber rounds.

13 Q. And that was within the -- it was inside the  
14 gun before you took it out and took this picture?

15 A. Yes, sir.

16 Q. Next 75-H. Can you identify that for us?

17 A. Yes, sir. That's the Ruger, and that's inside  
18 of the center -- I can't think of it -- console or  
19 the center glove compartment between the two front  
20 seats.

21 MR. LACEY: We'd offer 75-H at this time.

22 MR. COOPER: No objection.

23 MR. ARMSTRONG: No objection.

24 MR. YOUNG: No objection, Your Honor.

25 THE COURT: It can be admitted, can be



1 published.

2 BY MR. LACEY:

3 Q. Now, can you enlarge that a little bit,  
4 please.

5 What can you -- what do you see from this  
6 photograph here? In reference to the pistol, can  
7 you just see the handle part of it?

8 A. Yes, sir. There is a magazine inside as well.

9 Q. What's to the right of it, something brown in  
10 color?

11 A. Yes, sir. There's two cloth gloves.

12 Q. Okay. And these cloth gloves were covering up  
13 part of the pistol, obviously?

14 A. Yes, sir.

15 Q. 75-I, please. Can you identify that for us?

16 A. Yes, sir. That's the gloves moved off to the  
17 side before I took this picture of the same  
18 handgun.

19 MR. LACEY: We'd offer 75-I.

20 MR. COOPER: No objection.

21 MR. ARMSTRONG: No objection.

22 MR. YOUNG: No objection.

23 THE COURT: It can be admitted, can be  
24 published.

25 BY MR. LACEY:

1 Q. And who moved these gloves off to the side so  
2 you can could see this pistol? Was that you or was  
3 that somebody else?

4 A. It was me, sir.

5 Q. 75-J. Can you identify that for us?

6 A. Yes, sir. That's the same Glock from the  
7 previous picture with the magazine removed.

8 MR. LACEY: We'd offer 75-J.

9 MR. COOPER: No objection.

10 MR. ARMSTRONG: No objection.

11 MR. YOUNG: No objection.

12 THE COURT: It can be admitted and  
13 published.

14 BY MR. LACEY:

15 Q. You mentioned the magazine's off to the side  
16 of the weapon.

17 Does your report reflect how many bullets were  
18 inside the magazine that was inside the weapon?

19 A. Yes, sir. 15 nine millimeter rounds.

20 MR. LACEY: No further questions, thank  
21 you.

22 CROSS-EXAMINATION

23 BY MR. COOPER:

24 Q. Hi.

25 A. Hi.

1 Q. You -- one of the things -- you wrote a  
2 report, a Phoenix Police Department report, after  
3 taking part in the retrieval of the evidence from  
4 the vehicle; correct?

5 A. Yes, sir.

6 Q. Okay. And one of the things that you  
7 indicated in the report is that three officers, I  
8 believe, border patrol officers, submitted to  
9 buccal swabbing or buccal swabbing; correct?

10 A. Correct.

11 Q. And that means that they had Q-Tips,  
12 basically, put inside their mouths to eventually  
13 check for DNA; correct?

14 A. That's correct.

15 Q. And that would be for elimination purposes for  
16 just in case they had touched any of the evidence;  
17 right?

18 A. Yes, sir.

19 Q. You didn't expect -- you weren't suspecting  
20 them of committing any crimes?

21 A. Excuse me?

22 Q. You weren't suspecting them of committing any  
23 crimes; right?

24 A. That's correct.

25 Q. But DNA testing is a method where law

1 enforcement can look to see if a suspect or  
2 somebody has left basically evidence on an object;  
3 right?

4 A. Yes, sir.

5 Q. And that would be basically molecular or  
6 chemical evidence; right?

7 A. I believe that's what it's called.

8 Q. Okay. Similarly, one of the things that would  
9 happen as a detective, you look for physical  
10 evidence like fingerprints; right?

11 A. Yes, sir.

12 Q. Well, DNA can be left at the scene or on an  
13 object by a lot of different methods. Is that fair  
14 to say?

15 Let me ask -- I asked that the wrong way.

16 A. Please. That's kind of an open-ended  
17 question.

18 Q. Yeah. It was poorly worded.

19 For instance, if I spit on something or while  
20 I'm talking if I spit, there could be DNA in that  
21 saliva that lands on --

22 A. That's correct, yes, sir.

23 Q. Similarly, there is DNA in blood, for  
24 instance.

25 A. Yes, sir.

1 Q. And you can retrieve DNA that way or various  
2 bodily fluids; right?

3 A. Yes.

4 Q. Okay. Additionally, though, there's DNA that,  
5 if you touch an object, there's what's called  
6 epithelial cells in the skin that, when you touch,  
7 you'll leave those epithelial cells on the object  
8 that you touched, perhaps; is that fair?

9 A. I don't know what an epithelial cell is, sir,  
10 so I couldn't answer that.

11 Q. Take my word for it.

12 A. Okay.

13 Q. But you know as a detective that you can look  
14 for DNA in a lot of places where people might not  
15 expect that they've left them; right?

16 A. That's correct.

17 Q. Okay. And in fact, are you aware that, when  
18 you sweat, you might leave epithelial -- or you  
19 might leave DNA; right?

20 A. Yes, sir.

21 Q. Okay. So the vests that were retrieved from  
22 the vehicles could certainly have been checked for,  
23 for instance, DNA; right?

24 A. Yes.

25 Q. You weren't -- you didn't take part in any of

1     that sort of thing; right?

2     A.   That's correct, I did not.

3     Q.   But the -- you know, the process is, it goes  
4     to a laboratory, and somebody would swab the area  
5     where somebody might sweat on a vest to see if they  
6     had left DNA of some sort; right?

7     A.   If it's requested, yes.

8     Q.   Have you looked at your report recently?

9     A.   Yes, sir.

10    Q.   That's the report -- I think you wrote it  
11    March 3rd.

12    A.   No, sir.

13    Q.   March 2nd?

14    A.   No.   That's when the incident happened.   The  
15    report was written on the 11th, I believe.

16    Q.   On the 11th.   All right.

17           I'd like to ask you about a couple of the  
18    things in the report that were a little bit  
19    confusing.

20           The vests that were just introduced into  
21    evidence were -- there are two of them; right?

22    A.   Yes, sir.

23    Q.   Okay.   In your report, which would be page  
24    4. -- do you have that in front of you?

25    A.   Yes, sir.

1 Q. These vests have serial numbers; right?

2 A. Yes, sir.

3 Q. And one of the things that you do when you  
4 retrieve evidence is you write down what the serial  
5 number is of various items, if they have it; right?

6 A. Yes.

7 Q. And in your report, you wrote down the serial  
8 number of a vest; right?

9 A. Yes, sir.

10 Q. And the serial number that I have in front of  
11 me is NSN8470015267917; right?

12 A. Yes, sir.

13 Q. That's for one vest; right?

14 A. Yes, sir.

15 Q. There doesn't appear to be a serial number for  
16 another vest.

17 A. That's correct. There's a number next to the  
18 name of the vest though. It's the only one that  
19 could be found.

20 Q. Well, actually, what I'm asking is, in your  
21 report, on page 4, I can only find a listing for  
22 one vest.

23 A. Point Blank Body Armor.

24 Q. Yeah, number one.

25 A. And then the one below it, it says a green

1 ballistic vest.

2 Q. Oh, okay. So they're different brands?

3 A. Yes, sir.

4 Q. Okay. So that 8470, that's the serial number  
5 for the second vest; is that right?

6 A. That could be. It kind of goes along with the  
7 first one, but that was the number that was found.

8 Q. All right. Well, I guess, then, my next  
9 question is, the -- in your report, you indicate  
10 that those vests were found in the black Escalade.

11 A. Initially, that's what it was, but I don't  
12 know if you have my second report to clarify that.  
13 I made a mistake on that.

14 Q. Okay.

15 A. The second supplement, as we call it, to my  
16 initial report states that correction, that the  
17 vests were found in the Expedition.

18 Q. Okay. So, this is when you wrote the initial  
19 report, you had -- I guess you'd take handwritten  
20 notes out there; is that right?

21 A. Yes, sir.

22 Q. Okay. And so the vests were found in the --  
23 in which vehicle?

24 A. The Expedition, the red vehicle.

25 Q. The red vehicle. Okay.



1           And actually, there were a couple of weapons  
2 that, after the search and everything was over,  
3 were not located by law enforcement; isn't that  
4 correct?

5   A.   There was one.

6   Q.   Okay. Well, there's one weapon with rounds  
7 that were in the weapon; right?

8   A.   Yes, sir.

9   Q.   And that would be the Python?

10   A.   Yes, sir.

11   Q.   And there were -- how many agents were out  
12 there, that you saw?

13   A.   A lot.

14   Q.   A lot. Okay. And how many were participating  
15 in the search, do you know, before you got there  
16 even?

17   A.   I have no idea, sir.

18   Q.   Okay. The -- apparently the Python, the Colt  
19 Python, was found by the tow truck driver; right?

20   A.   Yes, sir.

21   Q.   And then he called it to, I guess, to your  
22 attention?

23   A.   Yes, sir.

24   Q.   And it was then listed as being recovered from  
25 the Escalade; right?

1 A. Yes.

2 Q. Okay. And how much after the search did the  
3 tow truck driver find the additional gun?

4 A. I don't recall.

5 MR. COOPER: Okay. That's all. Thank  
6 you.

7 CROSS-EXAMINATION

8 BY MR. ARMSTRONG:

9 Q. Good afternoon, Detective.

10 A. Good afternoon, sir.

11 Q. Just a very few questions here.

12 Do you remember the time you arrived at the  
13 scene where the Cadillac and the Ford had been  
14 pulled over?

15 A. No, sir, I don't.

16 Q. Was it still light?

17 A. Yes.

18 Q. And I think you told Mr. Cooper and maybe  
19 Mr. Lacey, there was other agents and other law  
20 enforcement, there was border patrol agents, all  
21 over the scene?

22 A. That's correct.

23 Q. How many folks were there, if you know, if  
24 you're able to guess?

25 A. I couldn't guess, sir. There was so many

1 people walking around.

2 Q. With regard to Exhibit 78-B, if we could take  
3 a look at that.

4 Well, do we have the photo, maybe 78 -- is it  
5 78-A, the commensurate photo? Maybe I can do it  
6 this way, without getting the weapon out.

7 The Kel-Tec .223?

8 A. Yes, sir.

9 Q. That was a weapon you said -- Mr. Lacey asked  
10 you where you located it, and you said, "I believe  
11 it was found in the Escalade."

12 Do you recall your testimony?

13 A. Yes, sir.

14 Q. You're not certain where it was located; is  
15 that true?

16 A. No, sir. Like I mentioned before, the first  
17 time I saw those weapons were on the tailgate of  
18 the Escalade.

19 Q. Okay. Clearly -- were there two or three at  
20 the time you saw them?

21 A. Two or three what?

22 Q. Two or three weapons on the tailgate.

23 A. I believe all the weapons had been taken out.  
24 They were being photographed.

25 Q. Okay. Okay. So the scene had been altered?

1 Law enforcement had moved the weapons around the  
2 vehicle; is that true?

3 A. Yes, sir.

4 Q. And had -- had they also moved the vests that  
5 were in the Ford?

6 A. I have no idea, sir.

7 Q. Okay. Did you speak with Ja'Cory Ranger that  
8 day?

9 A. No, sir.

10 Q. So your role in this case was you took the --  
11 put the rifles, I guess, and the weapons and other  
12 items you seized, put it in the trunk of your car  
13 or someplace in your vehicle, transported them to  
14 Tucson?

15 A. Yes, down here in Tucson, to the Pinal County  
16 Sheriff's Office.

17 Q. Pima?

18 A. Pima.

19 Q. We're Pima.

20 A. Pima.

21 Q. Okay.

22 A. My mistake, sorry.

23 Q. Came to the Pima County Sheriff's Department,  
24 dropped off the weapons, and did that end your  
25 involvement?

1 A. Yes, sir.

2 MR. ARMSTRONG: Okay. Thank you, sir.

3 THE COURT: You're welcome.

4 CROSS-EXAMINATION

5 BY MR. YOUNG:

6 Q. Sir, I'm going to ask you about Exhibit No.

7 78-B. It is the Kel-Tec .223?

8 A. Yes, sir.

9 Q. And I'm not going to pull it out and handle  
10 it, because in my experience, these things are  
11 usually covered with fingerprint powder, and I've  
12 learned my lessons about that. I know I'll touch  
13 my face as soon as I touch the weapon.

14 But the Kel-Tec .223, that was mated with a  
15 30-round magazine?

16 A. I believe so, sir, yes.

17 Q. And your report reflects that; right?

18 A. Yeah. The magazine contained 24 rounds, sir.  
19 I don't know if they make the 24-round magazines or  
20 25.

21 Q. That was my next question. The 30-round  
22 magazine had 24 rounds in it; correct?

23 A. That's correct.

24 Q. And there was no spare magazine for that  
25 weapon?

1 A. I didn't find one, sir, or I didn't see one, I  
2 should say.

3 Q. There was also an AR-15 .223 rifle in the  
4 Escalade?

5 A. Yes, sir.

6 Q. And that rifle was mated with a 20-round  
7 magazine?

8 A. That's correct.

9 Q. And that 20-round magazine had 20 rounds in  
10 it?

11 A. That's correct.

12 Q. That weapon also had no spare magazine?

13 A. I didn't see a spare magazine for that, sir.

14 Q. There was a Norinco MAK-90 Sporter AK-47 also  
15 in the Escalade.

16 A. That's correct.

17 Q. And that weapon was mated with a 30-round  
18 magazine?

19 A. I don't know how many -- how big the magazine  
20 was or what the load capacity of it was, but it  
21 contained 22 rounds.

22 Q. And they don't make 22 round magazines for  
23 that weapon, do they?

24 A. I don't know, sir.

25 Q. In all probability, you've really only heard

1 of 30 round magazines for that weapon; right?

2 A. Yes, sir, 20 or 30 rounds.

3 Q. Sometimes 20 rounds but mostly 30 rounds?

4 A. Yes.

5 Q. You've never heard of a 22-round magazine for  
6 an AK-47?

7 A. No, sir.

8 Q. So that weapon as well, the magazine for that  
9 weapon is also partially empty?

10 A. I did not empty the weapon, sir, so I don't  
11 know how the weapon was found.

12 Q. But it was found with 22 rounds in it?

13 A. Yes, sir.

14 Q. And again, there was no spare magazine for  
15 that weapon?

16 A. I did not see one.

17 Q. The Ruger P95 nine millimeter found in the  
18 Expedition, that had no spare magazine; is that  
19 correct?

20 A. I did not see one, sir.

21 Q. And in fact, the Ruger nine millimeter had not  
22 a single spare nine millimeter bullet in either  
23 vehicle?

24 A. I don't know what -- how many weapons were in  
25 the vehicle. Excuse me. I should rephrase that.

1 I don't know if there was any other ammo in the  
2 vehicle.

3 Q. You never saw any other ammunition in the  
4 vehicle?

5 A. No, sir, I did not.

6 Q. The Taurus Millennium .45 that was in the  
7 Expedition also had no spare magazine; is that  
8 right?

9 A. I did not see one, sir.

10 Q. And in either vehicle, there was not a single  
11 spare .45 bullet, was there?

12 A. I don't know, sir.

13 Q. But you never saw a single spare .45?

14 A. I did not see one.

15 Q. And you are the person who took the weapons  
16 and the magazines and the bullets into evidence?

17 A. What do you mean? Yes, I did, yes. Okay. I  
18 see.

19 Q. You packaged them up; right?

20 A. As best as I could, yes.

21 Q. And you transported them from the scene?

22 A. That's correct. That was me.

23 Q. The Glock 17 nine millimeter had no spare  
24 magazine; is that correct?

25 A. I did not see one.



1 Q. And once again, there was not a single spare  
2 nine millimeter bullet in either vehicle?

3 A. I did not see one.

4 Q. There was a CZ-75 nine millimeter that also  
5 had no spare magazine?

6 A. I did not see any spare magazines in the  
7 vehicle, sir.

8 Q. And still, no spare nine millimeter vehicle --  
9 nine millimeter bullet in either vehicle?

10 A. As I mentioned before, I didn't see any spare  
11 magazines or bullets.

12 Q. The Colt Python .357, now, that's a revolver;  
13 is that right?

14 A. Yes, sir.

15 Q. And so revolvers don't really come with spare  
16 magazines, do they?

17 A. No, sir. Speed loaders, maybe, but --

18 Q. Well, okay. Since you bring it up, there was  
19 no speed loader for a Colt Python .357 in either  
20 vehicle, was there?

21 A. I didn't see one, no, sir.

22 Q. And in fact, there might have been a spare  
23 .357 bullet under one of the seats in the  
24 Escalade.

25 Do you recall that?

1 A. I didn't see any bullets. I wasn't looking  
2 for bullets after I retrieved the weapons.

3 Q. So I'll have to address question to somebody  
4 else?

5 A. That's correct.

6 Q. And just to be entirely fair, were you aware  
7 or do you know if there were seven spare .223  
8 rounds under the seats in the Escalade?

9 A. I'm not aware of any of that, sir.

10 Q. So you didn't search underneath the seats in  
11 the Escalade?

12 A. No, sir.

13 Q. Okay. So really, to your knowledge, there's  
14 no spare magazines for any of these weapons?

15 A. That's correct.

16 Q. Two of the three rifles had partially empty  
17 magazines; is that correct?

18 A. That's correct.

19 Q. To your knowledge, there's really no spare  
20 bullets that you saw?

21 A. That I could see.

22 Q. Now, you testified that you took buccal  
23 swabs. Am I saying that right?

24 A. Buccal swabs, buccal swabs, yes, either way.

25 Q. Well -- either way is correct?

1 A. Either way is correct.

2 Q. You took swabs from Border Patrol Agents  
3 Dominguez, Fernandez, and Burlinger?

4 A. That's correct.

5 Q. And that was because why?

6 A. For elimination purposes, so that way the lab,  
7 if the weapons are processed for DNA, they -- the  
8 lab will know who those agents' DNA is and will  
9 focus on the DNA that is not theirs.

10 Q. Okay. And for elimination purposes, there  
11 were a lot more agents than that there; right?

12 A. Yes, sir.

13 Q. But those were the three agents that were  
14 touching the weapons?

15 A. Those were three that I saw touching weapons.

16 Q. And they were touching the weapons without  
17 gloves on?

18 A. That's correct.

19 Q. So you wanted to eliminate their DNA from the  
20 weapons when you sent it to the lab?

21 A. Yes, sir.

22 Q. And in fact, you did take swabs off the  
23 various weapons and sent it to the lab, did you  
24 not?

25 A. No, sir, I did not.

1 Q. There was a report. Did you -- the Phoenix  
2 Police Department has a DNA lab, doesn't it?

3 A. Yes, sir.

4 Q. And are you the person who submitted the swabs  
5 to the Phoenix Police Department lab?

6 A. No, sir.

7 Q. In any case, when you handled the weapons,  
8 what precautions did you take to keep from  
9 contaminating the weapons?

10 A. I changed gloves every time I switched  
11 weapons.

12 Q. So you put on gloves before you touched the  
13 weapons?

14 A. That's correct.

15 Q. And each time you touched a weapon, you took  
16 off that pair of gloves, threw them away, and put  
17 on another pair of gloves before you moved on to  
18 the next weapon?

19 A. That's correct.

20 Q. And that's so you didn't take DNA from one  
21 weapon to the next to the next to the next?

22 A. That's correct.

23 Q. The vests that you saw in the Expedition,  
24 those could certainly contain DNA as well?

25 A. That's correct.

1 Q. In fact, sweat is an excellent source of DNA?

2 A. That's correct.

3 Q. And if anybody had been sweating inside of  
4 those vests, the DNA lab would know about it?

5 A. You would hope so, yes.

6 Q. So the DNA lab could tell who's been wearing  
7 those vests?

8 A. Yes, sir.

9 Q. In fact, the DNA lab could tell you who even  
10 touched those vests.

11 A. If they were wearing gloves or not.

12 Q. If they were not wearing gloves, they could  
13 tell who handled those vests with bare skin?

14 A. Yes.

15 Q. And those vests really don't breathe all that  
16 well, do they?

17 A. No, they don't.

18 Q. So if you've got one on, people tend to sweat  
19 under them a lot, don't they?

20 A. Yes.

21 Q. And that sweat would certainly be absorbed  
22 into that vest from whoever was wearing it?

23 A. If the skin came in contact with a vest, yes.

24 Q. And that would be fairly easy to check at the  
25 DNA lab?

1 A. Yes.

2 Q. In fact, the lab is so good that you don't  
3 even need to see a fingerprint anymore to see who  
4 has handled an item?

5 A. It's just part of that -- I got prints on one  
6 of my last cases instead of DNA, so --

7 Q. But the DNA lab can tell who's handled a  
8 firearm?

9 A. If they were not wearing gloves or depending  
10 on the circumstances, yes.

11 Q. And they can tell who's handled a magazine?

12 A. Yes.

13 Q. And they can even tell who's handled the  
14 bullets that went into the magazine?

15 A. Yes.

16 Q. And that's even if there's no visible  
17 fingerprints on those items?

18 A. Yes.

19 Q. And that's why you're so careful when you  
20 collect that evidence?

21 A. That's correct.

22 Q. So as you sit here right now, you have no idea  
23 who's ever worn those two vests before?

24 A. That's correct.

25 MR. YOUNG: That's all I have, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. LACEY:

3 Q. Sir, you were asked some questions about  
4 whether there were extra gun magazines and extra  
5 bullets.

6 Do you recall those questions?

7 A. Yes, sir.

8 Q. Now, were all the guns that you've looked at  
9 here today, were they loaded with bullets in each  
10 one of them and magazines and otherwise.

11 A. Yes, sir.

12 Q. Every one of the guns was loaded then; is that  
13 right?

14 A. Yes, sir.

15 Q. Some with 22 instead of 30 bullets?

16 A. Yes, sir.

17 Q. You also mentioned when you were asked some  
18 questions about leaving DNA or leaving prints that  
19 gloves may impact that?

20 A. Yes, sir.

21 Q. Like the brown gloves that were found in the  
22 console in the car with the one pistol, in the  
23 glove box, in the center console?

24 A. Yes, sir.

25 MR. LACEY: Nothing further.

1           THE COURT: If the jurors have any  
2 questions, please place them in writing.

3           There's at least one.

4           (The following proceedings occurred at the  
5 bench.)

6           THE COURT: "Is the Colt Sporter II equal  
7 to an AR-15 and equal to an M-16? If not, who had  
8 the M-16?"

9           "Does a Norinco model MAK-90 equal an  
10 AK-47?"

11           You guys are confusing everybody.

12           MS. HOPKINS: We have a firearms expert  
13 coming on next.

14           THE COURT: Do you?

15           MR. LACEY: Yes.

16           MR. ARMSTRONG: I missed an objection, I  
17 think, maybe. Did you ask him about the weapons  
18 being loaded? Did you ask the witness whether --  
19 I'm requesting permission to recross.

20           MR. LACEY: Speak up.

21           THE COURT: He asked if the weapons were  
22 all loaded and he said yes, each one.

23           MR. ARMSTRONG: Okay. May I -- I missed  
24 the objection. I think I missed the evidence. He  
25 wouldn't know if they were loaded or not. By the



1 time he got there, the weapons were apart. You  
2 know, he was taking pictures of the magazines  
3 laying next to weapons. I'd like --

4 MR. LACEY: I'll ask him. I can clarify  
5 that, or you can ask him.

6 THE COURT: All right.

7 MR. ARMSTRONG: Thank you.

8 (End of bench conference.)

9 THE COURT: I have a couple of questions  
10 from the jurors.

11 Is the Colt Model Sporter II equal to an  
12 AR-15?

13 THE WITNESS: Yes, sir.

14 THE COURT: And is that the same as an  
15 M-16?

16 THE WITNESS: No, sir.

17 THE COURT: Was there an M-16 in the  
18 case?

19 THE WITNESS: No, sir.

20 THE COURT: Does a Norinco model MAK-90  
21 equal an AK-47?

22 THE WITNESS: It's just the same type of  
23 round. It's like a derivative of that weapon.

24 THE COURT: All right. Mr. Armstrong?

25 MR. ARMSTRONG: Thank you, Your Honor.

## FURTHER EXAMINATION

BY MR. ARMSTRONG:

Q. Very briefly, Detective, I just wanted to clarify something.

Mr. Lacey asked you about the weapons and whether they were loaded, the rifles and whether they were loaded, and I believe you testified that they were.

A. Yes, sir.

Q. Okay. Do you know whether those -- the magazines -- when I'm talking about a weapon being loaded, I'm talking about the magazine being inside the actual rifle.

When you arrived on the scene, did you see loaded weapons?

A. Not out of the Escalade, no. When I arrived to the first vehicle, which is the black Escalade, the weapons had already been made safe. The magazines, if there were magazines in the weapon itself, had been removed.

Q. And you didn't have -- did you have any discussion with anyone from the border patrol about whether, in fact, the -- well, let me strike that.

So just to be clear, you never saw the magazines actually inside the weapons from the

1 Escalade?

2 A. That's correct.

3 MR. ARMSTRONG: Okay. Thank you. Nothing  
4 further.

5 THE COURT: You're gone. Thank you.

6 MR. LACEY: Just one follow up?

7 THE COURT: You didn't move fast enough.

8 MR. LACEY: It's the long legs, Judge.

9 FURTHER EXAMINATION

10 BY MR. LACEY:

11 Q. Sir, as to the Ford Expedition, did you see  
12 those weapons before they had been -- any bullets  
13 may or may not have been taken out? Were they  
14 still intact when you got there, to the Expedition?

15 A. Yes, sir. I was the one that cleared the red  
16 Expedition. In essence, I was the one that removed  
17 all the weapons from within the vehicle and emptied  
18 them out, made them safe.

19 Q. And were all those weapons in the red  
20 Expedition with Jerome Ranger and Ghermon Tucker in  
21 the front seat, were all those weapons loaded?

22 A. Yes, sir.

23 MR. LACEY: Nothing further.

24 THE COURT: We'll take about 10 minutes.

25 (The jury exits the courtroom.)

1 (Off the record.)

2 (The jury enters the courtroom.)

3 THE COURT: Show the jury entering the  
4 courtroom, the presence of all counsel and the  
5 defendants.

6 You may call your next witness.

7 MS. HOPKINS: The Government calls Brett  
8 Mills to the stand.

9 BRETT MILLS, WITNESS, SWORN

10 THE COURT: Sir, the Rule has been invoked  
11 in this case. That means, except during the time  
12 that you're testifying, you must remain outside the  
13 courtroom, and you're only allowed to discuss your  
14 testimony with the attorneys involved in the case.

15 THE WITNESS: Yes, sir. Understood.

16 THE CLERK: Please state your name for the  
17 record and spell your last name.

18 THE WITNESS: My name is Brett, B-r-e-t-t,  
19 last name Mills, M-i-l-l-s.

20 THE CLERK: Thank you.

21 THE COURT: You may proceed.

22 DIRECT EXAMINATION

23 BY MS. HOPKINS:

24 Q. Good afternoon, Mr. Mills.

25 A. Good afternoon, ma'am.

1 Q. Where do you work?

2 A. I work at the FBI laboratory in Quantico,  
3 Virginia.

4 Q. And what is your title?

5 A. I'm a forensic examiner in the firearms  
6 toolmarks unit.

7 Q. And how long have you been a forensics  
8 examiner?

9 A. A forensics examiner since 1995.

10 Q. And what are some of your duties as a  
11 forensics examiner?

12 A. I examine firearms, bullets, cartridge cases,  
13 other ammunition components; determine if firearms  
14 operate in the manner they were designed to; to see  
15 if bullets or cartridge cases were fired from or  
16 within a firearm.

17 We also do tool cases, if a knife cut, say, a  
18 piece of tubing, and we also do serial number  
19 restoration on obliterated numbers.

20 Q. Now, what kind of specialized training did you  
21 receive to become a forensics examiner?

22 A. The Bureau has a two-year comprehensive  
23 program. You start out -- it's basically you go  
24 out and you read. You study, study the  
25 literature. You learn the theory behind it. You

1 will go and visit manufacturers of firearms to see  
2 how the unique marks that are left on the bearing  
3 surface of, say, the breechface and barrel are  
4 produced.

5       You also go and visit tool factories, because  
6 the tools themselves can actually impart those  
7 marks on the surface of barrels, so you want to see  
8 how the manufacturing process creates the unique  
9 marks, which allows us to say something is or is  
10 not fired from.

11       You then go through a side-by-side working  
12 process with a qualified examiner working cases.  
13 You're given mock cases. You're given tests, oral  
14 boards, and eventually moot courts, and then, if  
15 you pass all of that, then you are deemed by the  
16 bureau as a forensic examiner.

17 Q. And what's your educational background?

18 A. I have a bachelor's of science in biology from  
19 Towson State University in Towson, Maryland.

20 Q. And have you previously testified in federal  
21 or state court as an expert witness regarding the  
22 function, testing, or operability of firearms?

23 A. Yes, ma'am, I have.

24 Q. Approximately how many times?

25 A. Strictly on operability of firearms, at least

1 50 times.

2 Q. Now, would you please describe the procedure  
3 that you follow to determine the operability of  
4 firearms?

5 A. When we receive -- or I receive particularly a  
6 firearm in my unit, it's already gone through all  
7 the other units that would have to examine it.

8 I would then open the box, inventory the item  
9 in it so that the worksheet that I have lets me  
10 know whether or not it's the true piece of  
11 evidence. I'll write all my general notes on it,  
12 make, model, materials it's made of, did it have  
13 black grips, did it have wood grips.

14 Once I have all my notes written, I'll go into  
15 our ammunition room and pull test samples to test  
16 fire. Depending on the type of firearm, how many  
17 magazines are submitted, or if ammunition submitted  
18 with the case, we try and shoot one of each type,  
19 so it could be anywhere from two test specimens to  
20 four or five fired in each gun.

21 We'll shoot them into a water tank and recover  
22 them, because when bullets go into water, they --  
23 they're not abraded. Even a cotton box that you  
24 probably have seen on some CSIs, just a fine cotton  
25 batting can actually rub and change the marks on

1 the surface of the bullets. That's why we shoot in  
2 water.

3 Then I go in and measure the lands and  
4 grooves, which will give me a classification of  
5 general rifling characteristics.

6 Q. Have you had an opportunity to examine and  
7 test fire the firearms in this case?

8 A. Yes, ma'am, I have.

9 Q. And when and where did this examination take  
10 place?

11 A. It took place in May 2011 at the FBI  
12 laboratory in Quantico, Virginia.

13 Q. And how many firearms did you test fire in  
14 this case?

15 A. A dozen.

16 Q. Now, did you follow the procedure that you  
17 previously described for the examination in this  
18 case?

19 A. Yes, ma'am.

20 Q. And did you memorialize your findings in a  
21 report?

22 A. Yes, ma'am.

23 Q. Okay. I'd first like to show you what's been  
24 admitted as Government's Exhibit No. 76-B.

25 MS. HOPKINS: And if the case agent can



1 approach the witness, Your Honor?

2 THE COURT: He can.

3 BY MS. HOPKINS:

4 Q. And if you want to use gloves, there's some up  
5 there for you. It's up to you.

6 Would you please give us a description of this  
7 firearm.

8 A. This is a -- this is a Smith & Wesson. I'm  
9 sorry. This is the Colt. No, this is a Colt AR-15  
10 A2 Sporter model. It's a semiautomatic, shoots a  
11 .223 or .556x45 round.

12 The design and everything about it is just  
13 like the M-16. The internal components prevent  
14 select fire. You can't fire this one full  
15 automatic. It's just a semiauto.

16 Q. Now, did you examine this firearm?

17 A. Yes, ma'am, I did?

18 Q. And what did you determine based on your  
19 examination?

20 A. That this gun functioned as designed by the  
21 manufacturer.

22 Q. Okay. Now, if we can get that gun back and  
23 then also show you 77-B, and this has already been  
24 admitted as well.

25 Can you please give a description of this

1     weapon.

2     A.   Yes, ma'am.  This is a Norinco MAK, M-A-K,  
3     90.  It is based off the Kalashnikov AK-47, which  
4     eventually became the AKM.

5           The Chinese, when they make those basically  
6     Kalashnikov -- it's a type 56.  This is their  
7     civilian market version of it.  It will shoot a  
8     .762x3 nine millimeter.  Again, this one only  
9     shoots in the semiauto.  It is -- all the  
10    manufacturing parts inside are for semiauto only.

11   Q.   Now, did you examine this specific firearm?

12   A.   Yes, ma'am I did.

13   Q.   And what were the results of your examination?

14   A.   It functioned normally as designed.

15   Q.   Okay.  If we could take that one back and take  
16   a look at 78-B.

17           Can you please give a -- that is 78-B, and  
18   it's already been admitted.  Can you give a  
19   description of this firearm.

20   A.   Yes, ma'am.  This is a Kel-Tec .223.  The  
21   model I believe is the SU-16.  It's manufactured in  
22   Florida.  It's a very lightweight gun, a lot of  
23   polymers on this, polymers on the fore end,  
24   polymers on the buttstock.  The magazine design's a  
25   little bit different.  It shoots the .223 or the

1 .556x45. It's a semiauto, and it functioned as  
2 designed when I test fired it.

3 Q. Okay. If you could give that back, and then  
4 we'll show you 79-B. It's already been admitted.

5 Can you please give us a description of that  
6 firearm.

7 A. This is a CS model 75 manufactured by -- in  
8 the Czech Republic. I'm not going to attempt to  
9 say the name of the manufacturing company. It's a  
10 very reliable gun. It shoots 9x19 millimeter, also  
11 known as nine millimeter Luger. For a pistol, it's  
12 a very good weapon, and this one functioned as  
13 designed when tested in the FBI laboratory.

14 Q. Okay. I'll show you next what's been admitted  
15 as Exhibit 80-B.

16 Can you give us a description of that  
17 firearm.

18 A. Yes, ma'am. This is a Glock 17, manufactured  
19 by Glock, Incorporated in Austria. It's imported  
20 to the United States and assembled in the United  
21 States down in Smyrna, Georgia.

22 It fits -- the magazine fit in and functioned,  
23 and the gun functioned as designed when test fired  
24 in the laboratory.

25 Q. Okay. Take a look at 81-B.

1           Can you give a description of that firearm.

2   A.   Yes, ma'am.  This is a Ruger P95 manufactured  
3   by the Ruger Corporation.  It's a semiautomatic  
4   pistol, shoots the nine millimeter round, and this  
5   one will function as designed as the manufacturer  
6   deemed it.

7   Q.   Okay.  Next is 82-B, and it's already been  
8   admitted.

9   A.   This is a .357 Magnum Colt Python revolver.  
10   It's a higher-powered cartridge than the regular  
11   .38 Special.

12           The hammer I noted was broken off on the back  
13   end.  I'm not sure why.  But when I test fired it,  
14   I could still shoot it in double action and single  
15   action, so it did function as designed.

16   Q.   Okay.  The next exhibit is 83-B.  It's already  
17   been admitted.

18           This is?

19   A.   This is a .45 auto.  It's a Taurus Millennium  
20   pistol.  You can tell it's a little bit shorter.  
21   Magazine capacity would be smaller than a normal  
22   full-sized.  Manufactured in Brazil.  It's a good  
23   quality weapon, and it functioned as designed.

24   Q.   The next firearm is what's been marked for  
25   identification as Government's Exhibit No. 84-B,

1 and it has not yet been admitted into evidence, but  
2 we're just going to show it to him right now.

3 THE COURT: 84-B?

4 MS. HOPKINS: Yes.

5 BY MS. HOPKINS:

6 Q. If you could please take a look at that and  
7 describe what that firearm is.

8 A. Yes, ma'am. This is a .45 caliber Springfield  
9 Armory. It's a -- I wouldn't call it a replica,  
10 but it's based on the design of the Colt 1911A1.

11 Q. And did you have an opportunity to examine  
12 that weapon?

13 A. Yes, ma'am, I did.

14 Q. And what were the results of that examination?

15 A. The firearm functioned as designed when test  
16 fired in the laboratory.

17 Q. All right. Thank you. The last firearm is  
18 Exhibit 85-B. Again, it's marked for  
19 identification as Exhibit 85-B and has not yet been  
20 admitted.

21 If you could take a look at that and describe  
22 what it is.

23 A. This is a .380 auto. It's a Jennings Firearms  
24 pistol. The model is referred to as Bryco. When  
25 it was test fired in the laboratory, it functioned

1 as designed.

2 MS. HOPKINS: May I have one moment, Your  
3 Honor?

4 THE COURT: You may.

5 MS. HOPKINS: No further questions for the  
6 witness.

7 MR. COOPER: I have no questions, Your  
8 Honor.

9 THE COURT: Mr. Armstrong?

10 MR. ARMSTRONG: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. ARMSTRONG:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. Just a few questions here.

16 The semiautomatic weapons, those can be  
17 converted into fully automatic weapons. It's  
18 illegal to do so, but it can be done.

19 Correct?

20 A. On certain models, yes, sir, they can. I can  
21 elaborate, if you'd like.

22 Q. Well, Exhibit 76-B, the Colt semiautomatic, is  
23 that a weapon that could be converted into a fully  
24 automatic weapon?

25 A. If you had all the component parts, yes, sir.

1 Q. And again, it's illegal to do so, but it's not  
2 a terribly difficult procedure.

3 Would you agree with that?

4 A. For the Colt, I would say yes because you need  
5 so many different parts and it's hard to get ahold  
6 of them or you have to have knowledge on how to  
7 manufacture, like, you would need a full auto sear,  
8 a full auto trigger assembly group. You have to  
9 modify the bolt.

10 So that one is a little more difficult than  
11 some of the other ones that are out there.

12 Q. To be clear though, the Colt was -- it's a  
13 semiautomatic weapon like you could buy at any  
14 retailer that sells a semiautomatic rifle; correct?

15 A. That is correct, yes, sir.

16 Q. None of these guns had been altered?

17 A. No, sir.

18 Q. You'd mentioned -- you mentioned 82-B, the  
19 Colt Python --

20 A. Yes, sir.

21 Q. -- that the hammer trigger had been -- the  
22 hammer had been -- you thought it had been broken  
23 off, but that's not something that a person would  
24 do in any way to gain an advantage with that  
25 weapon.

1           Would you agree with that?

2   A.   Oh, no, sir.  It would actually put you at a  
3   disadvantage.

4   Q.   Right.  Okay.

5           The Kel-Tec .223, I believe it's Exhibit 78-B,  
6   is that a weapon that can be converted into a fully  
7   automatic?

8   A.   To my knowledge, no, sir, not that I know of.  
9   Kel-Tec's never actually made a full auto machine  
10   gun version of it.  I'm sure if someone had the  
11   will and the way they probably could figure out a  
12   way to convert it.

13           MR. ARMSTRONG:  Those are the only  
14   questions I had.  Thank you.

15                           CROSS-EXAMINATION

16   BY MR. YOUNG:

17   Q.   Sir, these are all weapons that you can get  
18   down at the local Wal-Mart or the Sportsmans  
19   Warehouse or something like that; right?

20   A.   Some of them, yes, sir, but some of them have  
21   been discontinued and are no longer for sale.

22   Q.   But there's nothing special about any of these  
23   weapons?

24   A.   No, sir.

25   Q.   They're readily available on the retail



1 market, or at least current versions of them are?

2 A. I would agree with that, yes, sir.

3 MR. YOUNG: That's all I have, Your Honor.

4 MS. HOPKINS: Nothing further from the  
5 Government.

6 THE COURT: If the jurors have any  
7 questions for the witness, if so, please place them  
8 in writing.

9 Thank you. You may step down.

10 THE WITNESS: May I be excused, Your  
11 Honor?

12 THE COURT: You may. Where are you going  
13 back to?

14 THE WITNESS: Virginia. Thank you, sir.

15 THE COURT: Not until tomorrow though?

16 THE WITNESS: No, sir. I can change my  
17 flight, if you like. It's 7:30 flight.

18 THE COURT: I'm sorry. I'm not asking for  
19 you to change your flight.

20 THE WITNESS: Thank you, sir.

21 THE COURT: You may call your next  
22 witness.

23 MR. LACEY: Can we be seen at sidebar  
24 first? Sidebar?

25 THE COURT: Sure.

1           (The following proceedings occurred at the  
2           bench.)

3           MR. LACEY: Your Honor, we have the  
4 co-conspirator witness or witnesses coming on  
5 next. They're downstairs on the fourth floor.  
6 We'll need to bring some of them -- they're being  
7 watched by some FBI agents, so I didn't want them  
8 up here, for obvious reasons, so we'll -- if you'd  
9 give us five minutes, we'll bring them up and start  
10 with one of them.

11          THE COURT: Okay.

12          MR. LACEY: Thank you.

13          (End of bench conference.)

14          THE COURT: Five minute recess.

15          (The jury exits the courtroom.)

16          (Off the record.)

17          THE COURT: Place him under oath, would  
18 you please?

19          THE CLERK: Sir, please stand and raise  
20 your right hand.

21          JORGE ABEL MEDINA-SANTOS, WITNESS, SWORN

22          THE COURT: Mr. Lacey, go ahead. We were  
23 going to do a Dessureault hearing before the jury  
24 came in.

25          MR. LACEY: Okay.

1 THE CLERK: Please state your name for the  
2 record.

3 THE WITNESS: Jorge Abel Medina-Santos.

4 MR. LACEY: Judge, can we move the screen  
5 a little bit? It's kind of blocking the witness.

6 THE COURT: I'm not going to touch it  
7 again.

8 DIRECT EXAMINATION

9 BY MR. LACEY:

10 Q. Sir, let me direct your attention back to  
11 March of last year, March 2nd.

12 Did you get involved with other people to come  
13 to Tucson and get involved in being a driver for  
14 what was going to be a home invasion?

15 A. Yes, sir.

16 Q. Were you at some time shown some photographs  
17 after all this happened, after you were approached  
18 by law enforcement, and did you look at some  
19 photographs? Do you remember offhand?

20 A. Yes.

21 Q. And do you remember when that -- when that  
22 took place, roughly?

23 A. Yes.

24 Q. When was that, about how long after March 2,  
25 before anyone came to talk to you?

1 A. It was a couple of months later.

2 Q. At that point in time -- just for the record,  
3 are you related to anybody that was involved in  
4 this operation?

5 A. Yes.

6 Q. Who's that?

7 A. Yovani Valenzuela.

8 Q. Yovani Valenzuela. And he's already pled  
9 guilty in this case, as far as you're aware?

10 A. Uh-huh.

11 Q. You have to speak up. Yes or no?

12 A. Yes.

13 Q. Did you know some of the other people,  
14 Hispanic males, that were involved in this as well?

15 A. Yes.

16 Q. And was one of them Mayco?

17 A. Yes.

18 Q. Also known as Seco?

19 A. (Nodding.)

20 THE COURT: You have to answer.

21 THE WITNESS: Yes.

22 BY MR. LACEY:

23 Q. How long had you known Seco before this day,  
24 back in March of last year, March 2nd?

25 A. I'm not sure.

1 Q. Had you seen him around from time to time?

2 A. Yes, sir.

3 Q. And who's present? When you saw him, who else  
4 was around?

5 A. My brother-in-law.

6 Q. Yovani?

7 A. Yes.

8 Q. Okay. Did there come a time that particular  
9 day, on March 2nd, when you went to a meeting that  
10 took place in Phoenix before you came down to  
11 Tucson? Did you get together at somebody's house?

12 A. Yes.

13 Q. Did you see any black males at that location?

14 A. Yes, sir.

15 Q. Had you seen any of those black males in the  
16 past, prior to that time?

17 A. Probably once, at Seco's house.

18 Q. Okay. And that particular day, on March 2nd,  
19 this meeting took place at somebody's house in  
20 Phoenix; is that right?

21 A. Yes.

22 Q. Before you all came down to Tucson?

23 A. Yes.

24 Q. How many black males were present at that  
25 meeting?

1 A. I'm not sure, but it was a couple of them.

2 Q. When you say "a couple," how many people did  
3 you see at the meeting?

4 Or where did this take place? At somebody's  
5 house?

6 A. Yes.

7 Q. Did you go in the house?

8 A. I don't remember if I went inside the house or  
9 I was outside of the house. I'm not sure.

10 Q. Okay. And who was with you when you went to  
11 that location where the house was -- where the  
12 house was that we're talking about?

13 A. It was Mayco and Yovani.

14 Q. Mayco and Yovani?

15 A. And Yovani.

16 Q. Okay.

17 MR. COOPER: I'm sorry. I couldn't hear  
18 the second name.

19 MR. LACEY: Yovani.

20 MR. COOPER: Yovani.

21 BY MR. LACEY:

22 Q. When you went to that location, to the house,  
23 prior to that, had you had any conversations in the  
24 car about what was going to be happening that day?

25 A. By what I could hear, they were talking about

1     what was going to happen.

2     Q.   And was that a home invasion?

3     A.   Yes.

4     Q.   In Tucson?

5     A.   Yes.

6     Q.   Now, after going to this house, you say you  
7     saw some black male or males; is that correct?

8     A.   Yeah.

9     Q.   How long did you get to see them for back  
10    then?

11    A.   I'm not sure, but it was a minute.

12    Q.   Okay. And after this meeting at the house,  
13    did you later come to Tucson?

14    A.   We went to another house.

15    Q.   Up in Phoenix?

16    A.   Uh-huh.

17    Q.   Was that somebody called Miami?

18    A.   Yes, sir.

19    Q.   And after going to that house, did you  
20    ultimately come down to Tucson?

21           And we're skipping over a little bit just to  
22    get some things we're going to talk to you about.

23    A.   Yeah. We drove around a little bit longer.

24    Q.   Okay.

25           THE COURT: Who's the "we"?

1                   THE WITNESS: Me, Yovani, and Mayco.

2 BY MR. LACEY:

3 Q. Did you all three stay in the same car the  
4 same day?

5 A. Yes.

6 Q. What car was that?

7 A. A Jeep Commander, a white one.

8 Q. And whose car was that?

9 A. My brother-in-law's, Yovani's.

10 Q. When you came to Tucson, where did you go?

11 A. We went to a Food City?

12 Q. Here in Tucson?

13 A. Uh-huh.

14 Q. When you got to the Food City, were the same  
15 two people in the car with you, Yovani and Mayco?

16 A. Yes, sir.

17 Q. Once you got to Food City, did you see any  
18 black males at that location?

19 A. Yes.

20 Q. Do you remember what kind of vehicle or  
21 vehicles they were in?

22 A. It was an Escalade, a truck, and it was an  
23 Expedition, a red Expedition.

24 Q. Okay. And when you saw those vehicles, was  
25 that in Food City then?



1 A. Yes.

2 Q. Did you -- when you saw those two vehicles,  
3 did you see anybody that was inside those two  
4 vehicles?

5 A. Yeah. It was just black people inside of the  
6 vehicles.

7 Q. Had you seen any of those black persons prior  
8 to seeing them in the Food City parking lot,  
9 meaning earlier that morning or some other  
10 occasion?

11 A. Yes. I saw them in Phoenix.

12 Q. And how many of them, approximately, were in  
13 that position, that is, that you saw in Phoenix  
14 that you also saw in Tucson at Food City?

15 A. Two or three, a couple of them I saw.

16 Q. Okay. And when you saw them, how long did you  
17 see them for in the parking lot?

18 A. We were just right there at the parking lot,  
19 just a long, like, a long minutes.

20 Q. Okay. And what happened then?

21 THE COURT: I'm sorry. You said "a long  
22 minutes." What does that mean?

23 THE WITNESS: Like, a long time.

24 MR. COOPER: How many did he say? Five  
25 minutes?

1 MR. LACEY: He said "a long minutes."

2 THE WITNESS: I'm not sure how long we  
3 were there for.

4 BY MR. LACEY:

5 Q. Okay. And what happened then? Did you stay  
6 -- did somebody leave or you stayed there or what  
7 happened?

8 A. I was in the vehicles, and my brother-in-law  
9 and Seco left.

10 Q. Seco meaning Mayco?

11 A. Yes.

12 Q. When they left, what vehicle were you in?

13 A. My brother-in-law's, the Jeep Commander.

14 Q. Did you have the keys?

15 A. Yes.

16 Q. After they left, did they return?

17 A. They didn't return.

18 Q. And what did you ultimately do after that?  
19 Did you talk with anybody else at the Food City  
20 parking lot?

21 A. Yes.

22 Q. Who was that?

23 A. Seco's brother-in-law.

24 Q. Okay. And after speaking with him, did you  
25 find anything out?

1 A. Yes. That they got pulled over.

2 Q. "They" meaning?

3 A. Like, they got caught.

4 Q. Meaning Yovani and Mayco?

5 A. Yeah.

6 Q. Did you have any conversation in the Food City  
7 parking lot with any of the black males that you  
8 had talked to us about earlier?

9 A. Yes, when I was walking back to my vehicle.

10 Q. And do you recall what vehicle or vehicles  
11 those persons were in that you spoke to?

12 A. I remember talking to the driver of the  
13 Escalade. Just, I told them, "Hey, they got  
14 caught," and that's, like, about it.

15 Q. Okay. And after that conversation, did you  
16 then leave the area?

17 A. Yes. I headed back to Phoenix.

18 Q. Before heading back to Phoenix, did you stop  
19 at any stores along the way?

20 A. Yes, I stopped -- I got off two or three times  
21 off the freeway, but I stopped at a Circle K.

22 Q. Here in Tucson?

23 A. Yes.

24 Q. When you got off at the Circle K here in  
25 Tucson, did you see anyone there that you'd seen

1 earlier that day?

2 A. Yes. I saw --

3 Q. Who is that?

4 A. The Escalade and the Expedition.

5 Q. And when you saw those two vehicles, did you  
6 talk with anyone that was related to those vehicles  
7 at the Circle K?

8 A. Yes, I was -- I was parking. They walked up  
9 to me.

10 Q. And do you remember how many persons walked up  
11 to you there at the Circle K?

12 A. I don't -- I don't remember. It was, like,  
13 five, four, around there.

14 Q. Okay. And do you -- were you in the vehicle  
15 by yourself at this point in time?

16 A. Yes.

17 Q. In the white Jeep?

18 A. Uh-huh.

19 Q. Yes?

20 A. Yes, sir.

21 Q. Okay. And about how long did that  
22 conversation last at the Circle K here in town?

23 A. It didn't last a lot because I jumped back on  
24 the freeway.

25 Q. After that meeting, when you met some black

1 males by your vehicle, were you inside the vehicle  
2 or outside the vehicle?

3 A. Inside of the vehicle.

4 Q. Now, after these encounters, after the meeting  
5 with the people, the black males we talked about up  
6 until now, you said you were shown some photographs  
7 later?

8 A. Yeah.

9 Q. About how much later was this? You mentioned  
10 a couple of months?

11 A. Yeah, a couple of months.

12 Q. And when you were shown those photographs, who  
13 showed those to you?

14 A. The --

15 Q. The FBI?

16 A. Yes, the FBI.

17 Q. Mr. Edwards here?

18 A. I don't know his name. Yeah, he showed them  
19 to me.

20 Q. Agent Edwards.

21 And where did that take place?

22 A. In Arizona, Phoenix.

23 Q. Okay. When you were shown those photographs,  
24 were you able to make any identifications of anyone  
25 that you saw there?

1 A. Yes.

2 Q. And who was that?

3 A. My brother-in-law and Seco and the two or  
4 three I saw at the home where we stopped here in  
5 Phoenix.

6 Q. And when you say "two or three," two or three  
7 of the black males?

8 A. Yes.

9 Q. When you were shown those photographs, do you  
10 recall how many you were shown at that time?

11 A. No. I don't remember.

12 Q. Were there -- were there several?

13 A. Yeah, there was several people.

14 Q. After you were shown those photographs, were  
15 there any other occasions after that time when you  
16 were shown photographs again, that you can recall?

17 THE COURT: Let's just send the jury home  
18 for the day.

19 MR. LACEY: Okay.

20 THE COURT: Tell them to be back at 9:30.

21 MR. LACEY: Do you want me to wait a  
22 minute, Your Honor, or keep going?

23 THE COURT: No. Keep going.

24 MR. LACEY: Okay.

25 BY MR. LACEY:

1 Q. Do you recall any other occasions after that  
2 first batch of photographs you were shown by Agent  
3 Edwards -- were you shown photographs again that  
4 you can recall?

5 A. Yes.

6 Q. About how much later?

7 A. I'm not sure. I'm not sure how long later,  
8 how much later.

9 Q. When you were shown the first batch of  
10 photographs, you don't have a specific recollection  
11 about how many were shown to you?

12 A. No.

13 Q. And you said you were shown additional  
14 photographs later. Were these of the same people  
15 you saw earlier or different people or do you  
16 remember?

17 A. It was the people I saw earlier.

18 Q. And when you were shown these photographs, was  
19 it again by Agent Edwards at that time?

20 A. Yes.

21 Q. Did you recognize any people from that  
22 photograph display you were shown the second time?

23 A. Yes, the same people.

24 Q. The same people you had identified the first  
25 time --

1 A. Yes --

2 Q. -- in those photographs?

3 A. Yes.

4 Q. Were there any other occasions that you were  
5 shown photographs besides those two times?

6 A. When they got the photographs from here, from  
7 Tucson.

8 Q. You mean from stores or from different  
9 locations?

10 A. Yes, from different locations from here.

11 Q. And when you were shown those photographs,  
12 were those of people you had seen that day?

13 A. Yes.

14 Q. Were some of them of yourself and/or your  
15 brother-in-law?

16 A. It was myself and, yeah, a couple from my  
17 brother-in-law and other people.

18 Q. And the pictures you saw from stores down here  
19 that day, were any of them black males?

20 A. Yes.

21 Q. And was that the Circle K photographs?

22 A. Yes.

23 Q. Were you able to identify anyone from those  
24 photographs that you'd seen earlier, from the one  
25 -- the Circle K photographs you were shown that



1     were taken locally here?

2     A.    Yeah.

3     Q.    Had you seen those same people earlier, and if  
4     so, when?

5     A.    I saw them in Food City.

6     Q.    Okay.  When you were shown those photographs,  
7     was anything said to you by the agent as far as  
8     suggesting which photographs to pick out?

9     A.    No.

10    Q.    Do you recall what he told you or roughly what  
11    he told you when he showed you some photographs?

12    A.    No.  I don't remember.

13                 MR. LACEY:  Your Honor, for the sake of  
14    the hearing, I don't have anything further at this  
15    time.  I'll pass off to counsel.

16                 THE COURT:  Mr. Cooper?

17                         CROSS-EXAMINATION

18    BY MR. COOPER:

19    Q.    Sir, this is the year 2012; correct?

20    A.    Yes.

21    Q.    March 2nd of 2011 is when you agreed to  
22    participate in a home invasion; right?

23    A.    Can you tell me the question again?

24    Q.    Sure.  This is 2012.  Okay.  You agreed to  
25    participate in the home invasion, to come to Tucson

1 to help with the home invasion, on March 2nd of  
2 2011, close to 18 months ago; right?

3 A. Yeah.

4 Q. And you actually didn't talk to anybody from  
5 law enforcement or the FBI until February of 2012;  
6 correct?

7 A. Correct.

8 Q. And that's because you had been arrested on a  
9 traffic fine; right?

10 A. Yes.

11 Q. And at that point, three different FBI agents  
12 talked to you, I believe, February 15th of 2012;  
13 right?

14 A. Yes.

15 Q. Okay. That's close to a year after you went  
16 to this home where you say you saw black people;  
17 right?

18 A. Yeah.

19 Q. And during that entire year, you were out of  
20 custody. You were not in jail, were you?

21 A. No.

22 Q. You were only in jail for that week or so in  
23 February of 2012; right?

24 A. Right.

25 Q. How long were you in custody?

1 A. Two days, a day.

2 Q. And that was on -- you'd forgotten to pay a  
3 traffic fine; right?

4 A. Yes.

5 Q. And that's when they came to talk to you about  
6 what you had done a year before and what you had  
7 seen; right?

8 A. Yes.

9 Q. And you then told them about being with  
10 Yovani; right?

11 A. Yeah.

12 Q. And Yovani has a nickname, and his nickname is  
13 Yogi; right?

14 A. Yes.

15 Q. And you have a nickname, too, don't you?

16 A. Uh-huh.

17 Q. Is it pronounced Cochi (phonetic)?

18 A. Yeah. Cokey (phonetic).

19 Q. Cokey (phonetic).

20 Okay. And the morning of the 2nd of March,  
21 2011, you got a call from Yovani; right?

22 A. Yes.

23 Q. And Yovani said, asked you if you wanted to  
24 earn money; right?

25 A. Yes.

1 Q. And he was going to pay you \$2,000 to go to  
2 Tucson; right?

3 A. Yes.

4 Q. Okay. And you knew what you were getting  
5 involved in; right?

6 A. Yes.

7 Q. Okay. And you met Yovani and parked your car  
8 at -- I believe it was at an AM/PM; right?

9 A. Yes.

10 Q. Okay. And then you went to a house and got a  
11 fellow whose name is Mayco; right?

12 A. I don't know about that name.

13 Q. But you knew somebody named Seco?

14 A. Oh, yeah, Seco.

15 Q. And you went down to south Phoenix to find  
16 Seco; right?

17 A. Right.

18 Q. And you knew Seco before, hadn't you?

19 A. Yeah, by my brother-in-law.

20 Q. You knew him through Yovani?

21 A. Yes.

22 Q. Okay. And you then were driving around a  
23 neighborhood looking for people who were going to  
24 go to Tucson; right?

25 A. Yeah.

1 Q. Okay. And you knew that; right?

2 A. From my point of view, Seco was talking, and  
3 what was I hearing? They were looking for a  
4 person, people.

5 Q. And this was in -- are you from south Phoenix?

6 A. No.

7 Q. Do you know -- do you know the area in south  
8 Phoenix?

9 MR. LACEY: I'm going to object, Your  
10 Honor. I think, for the scope of this hearing, I  
11 don't think we need to go there.

12 THE COURT: True. Let's get to the  
13 identification issues while we're talking to him.

14 MR. LACEY: I will do that.

15 THE COURT: I was wondering why Mr. Lacey  
16 was waiting so long to mention it.

17 MR. LACEY: I thought he'd get to the  
18 point.

19 BY MR. COOPER:

20 Q. You got the call at what time in the morning  
21 from Yovani?

22 A. I'm not sure about the time.

23 Q. Were you working?

24 A. I was at a friend's house.

25 Q. Okay. Who was the friend?

1                   MR. LACEY: Your Honor, I'm going to  
2 object. Why don't we get to the point of the  
3 matter?

4                   THE COURT: Get to the identification,  
5 Mr. Cooper.

6                   MR. COOPER: Well, I'm just trying to find  
7 out what time this identification happened.

8                   THE COURT: You can ask him what time did  
9 he see the people at the house.

10 BY MR. COOPER:

11 Q. When you get to this home, where was the home  
12 that you went to?

13 A. It was, like, 24th Street and Broadway, I  
14 think.

15 Q. Okay. And what street was the home on?

16 A. I'm not sure.

17 Q. Okay. And you -- how many cars were in front  
18 of the home?

19 A. Two.

20 Q. And what were the cars?

21 A. A gray car. Probably a Cadillac. I'm not  
22 sure. And there was an Escalade.

23 Q. And what color was the Cadillac?

24 A. Probably gray. I don't remember.

25 Q. Probably gray?

1 A. Yeah. I don't remember the color.

2 Q. Okay. And what kind of Cadillac?

3 A. There was a Cadillac truck too.

4 Q. So there were two Cadillacs?

5 A. Uh-huh.

6 Q. One gray Cadillac. Was that a truck?

7 A. It was a vehicle.

8 Q. Like a sedan?

9 A. Four-door vehicle.

10 Q. A four-door vehicle?

11 A. Yeah.

12 Q. That's a gray Cadillac four-door vehicle?

13 A. Yeah.

14 Q. And the other one was what color, the truck?

15 A. It was a red -- it was a black Escalade.

16 Q. A black Escalade?

17 A. Yes.

18 Q. Okay. So you saw these two Cadillacs in front  
19 of the house; right?

20 Any other vehicles in front of the house?

21 A. No.

22 Q. You're sure of that?

23 A. Sure.

24 Q. Okay. And you absolutely remember the colors;  
25 right?

1 A. Yes.

2 Q. Okay. And you're sure there were two and not  
3 three vehicles?

4 A. There was two. Three with the one we were  
5 driving.

6 Q. No. I'm just talking -- not the vehicle you  
7 were driving. You remember that there were three;  
8 right? Or two?

9 A. Two.

10 Q. All right. And you talked to the FBI about  
11 what you saw when you got to the home; right?

12 A. Yes.

13 Q. Okay. But this was almost a year later;  
14 right?

15 A. Yes.

16 Q. All right. And you indicated that you're not  
17 sure you went inside the home; right?

18 A. Yes.

19 Q. You might have stayed outside?

20 A. I don't remember if I went inside or out, if I  
21 stayed outside.

22 Q. Okay. And if you were outside, how long were  
23 you outside?

24 A. Probably, like, 15 minutes, 20 minutes.

25 Q. Okay. And who were you outside with?



1 A. I think my brother-in-law was with me. I'm  
2 not sure if he went inside or he was outside with  
3 me. I don't remember.

4 Q. Okay. You don't remember if he stayed with  
5 you or went inside?

6 A. Yes. I don't remember.

7 Q. Okay. And so right now you're pretty sure you  
8 just stayed outside; right?

9 A. Yeah.

10 Q. Okay. And so you were outside for this 15  
11 minutes, maybe by yourself?

12 A. Uh-huh.

13 Q. Or maybe with Yovani; right?

14 A. Yeah.

15 Q. But you're not sure?

16 A. I'm not sure.

17 Q. Okay. And at some point, you saw some black  
18 people; right?

19 A. Yeah.

20 Q. And since you were outside, I assume these  
21 black people were just walking around outside?

22 A. They were coming out of the home.

23 Q. Okay. I assume -- this is daylight; right?

24 A. Uh-huh.

25 Q. You're certain of that?

1 A. Uh-huh.

2 THE COURT: Say yes or no.

3 THE WITNESS: Yes, uh-huh.

4 BY MR. COOPER:

5 Q. And we're talking it's March; right?

6 A. Yeah.

7 Q. And you were not under the influence of any  
8 drugs; right?

9 A. No.

10 Q. Okay. And the people that you saw coming out  
11 of the house, since it's outside, were not smoking  
12 any marijuana or any dope outside the house; right?

13 A. I was -- one probably was smoking. One of  
14 them was -- I don't know if he was smoking a  
15 cigarette or marijuana. One was smoking.

16 Q. Okay. One of these people was smoking  
17 something?

18 A. Yeah.

19 Q. But you don't know what it was?

20 A. Yeah. I think it was marijuana because he was  
21 rolling, you know.

22 Q. He was rolling it?

23 A. Yeah.

24 Q. So you saw this fellow rolling?

25 A. Yes.

1 Q. What did this fellow look like who was  
2 rolling?

3 A. He was kind of skinny. He was wearing a white  
4 long-sleeved shirt.

5 Q. Okay. And he had hair?

6 A. He limped a little bit.

7 Q. Okay. He was limping?

8 A. Yeah.

9 Q. And how tall?

10 A. I'm not sure. I was far away from him, so I  
11 couldn't tell.

12 Q. Did you ever see a picture of this fellow?

13 A. Yes.

14 Q. When?

15 A. When they showed it to me, when they showed me  
16 all the pictures.

17 Q. Okay. And so this fellow is the fellow you  
18 think was smoking outside?

19 A. Yeah.

20 Q. Okay. The other people were not?

21 A. No.

22 Q. But you don't remember how many other people  
23 there were?

24 A. I don't remember because they were just coming  
25 out of the house. I don't remember how many.

1 Q. I think you saw -- do you know what a  
2 prosecutor is?

3 A. Him, yeah.

4 Q. Him, right.

5 A. I don't know.

6 Q. When that fellow, Mr. Lacey, was talking with  
7 you, you said you thought you saw two black people;  
8 right?

9 A. Yeah.

10 Q. Okay. So you saw one fellow with a limp and  
11 one other black person?

12 A. Yeah. I saw two other persons. One had  
13 braids, kind of short, and one was skinny.

14 Q. So you saw three black people?

15 A. Yeah, outside the home.

16 Q. Okay. And that's it?

17 A. And then they were coming out because Seco --  
18 we were leaving, so they were coming out and  
19 talking to Seco.

20 Q. These three black people?

21 A. Yeah.

22 Q. And to this day, you're certain there were  
23 just three of them?

24 A. Yes.

25 Q. And outside the home; right?

1 A. Uh-huh.

2 Q. Okay. And how much -- so if they were coming  
3 out, were you in the car at this time?

4 A. Yes.

5 Q. And so they came out, and you saw them for  
6 maybe 30 seconds; is that fair?

7 A. Yeah.

8 Q. Okay. And you were probably 20, 30 feet away  
9 from them?

10 A. I was in front of the house.

11 Q. The car was?

12 A. Yes.

13 Q. And I'm asking you how far away. 20, 30 feet?

14 A. Yeah, probably.

15 Q. From me to you?

16 A. A little bit farther. Like, where the guy is  
17 sitting on the chair. Like, right there.

18 Q. The fellow with the green shirt on, the  
19 marshal?

20 A. Yes.

21 Q. Okay. So this would be, maybe, let's say, 50  
22 feet; is that fair?

23 A. Yeah.

24 Q. 40 or 50 feet. Okay.

25 And you saw them for 20, 30 seconds?

1 A. Uh-huh.

2 Q. Is that right?

3 THE COURT: Yes?

4 THE WITNESS: Yes. Sorry.

5 BY MR. COOPER:

6 Q. And you hadn't really seen these people  
7 before, had you?

8 A. No.

9 Q. These black people; right?

10 A. No.

11 Q. Okay. And then you went to Tucson, and I  
12 think you say that, while you were in Tucson, you  
13 were at a place called Food City; right?

14 A. Yes.

15 Q. And what time did you arrive at Food City?

16 A. I'm not sure about the time, but it was day,  
17 in the daylight.

18 Q. It was daylight?

19 A. Yeah.

20 Q. Okay. And you can't narrow it down?

21 A. Like, around three, three or two, around  
22 there.

23 Q. Around three or two. And why do you think it  
24 was around three or two?

25 A. Because we left from over there, like, around

1 12, so like three or two.

2 Q. You left from over where?

3 A. From Phoenix, like, at 12 or 11.

4 Q. Okay. And while you're at the Food City, you  
5 believe that you saw black people in two vehicles?

6 A. Yes.

7 Q. And were they the same vehicles that you saw  
8 earlier?

9 A. Yes.

10 Q. The two Cadillacs?

11 A. No. It was a Cadillac and an Expedition. I  
12 saw them in Phoenix.

13 Q. Okay. Well, you didn't say you saw an  
14 Expedition in front of the house.

15 A. No. It was not in front of the house, the  
16 Expedition. I saw it later.

17 Q. Where?

18 A. At 16th Street and Broadway, at a Circle K.

19 Q. Okay. And the Cadillac was one of the  
20 Cadillacs that was in front of the house?

21 A. Yes.

22 Q. And what color was that one?

23 A. The truck, black.

24 Q. Okay. And how many people were in these two  
25 cars at the Food City?

1 A. I couldn't really tell because it was too  
2 tinted.

3 Q. You couldn't really see inside because of the  
4 tint?

5 A. Yes.

6 Q. So you weren't able to see if the people you  
7 -- the two or three people you had seen in Phoenix  
8 were in the cars, could you?

9 A. No, I couldn't really see if they were in the  
10 car but, like, the front one, I can tell the one  
11 that was driving because it was the one that was  
12 smoking.

13 Q. And which car was that?

14 A. The black Cadillac.

15 Q. And that's the Escalade?

16 A. Yeah.

17 Q. Okay. And then did you see the black people  
18 again?

19 A. Yes.

20 Q. When?

21 A. Here in the Circle K.

22 Q. Okay. And how much after you left the Food  
23 City did you go to the Circle K?

24 A. Like, half an hour I was over there, after  
25 they told me that they got caught, I left.



1 Q. Who told you they got caught?

2 A. Seco's brother-in-law.

3 Q. And what's his name?

4 A. I don't know his name.

5 Q. You don't know his name?

6 A. No.

7 Q. And what kind of car was he driving?

8 A. A little blue car.

9 Q. A little blue car?

10 A. Yeah.

11 Q. And that car you saw where?

12 A. At Food City.

13 Q. Okay. And you were parked where in relation  
14 to the Escalade and the Expedition?

15 A. I was parked a little bit far away from the  
16 Escalade and Expedition.

17 Q. You were parked far away?

18 A. Yeah, like, I don't know how many -- yeah,  
19 like, four or five cars away.

20 Q. Four or five cars away?

21 A. Yes.

22 Q. Okay. And when the Kia -- you say it was a  
23 blue Kia?

24 A. I don't know what brand. I just said it's  
25 blue.

1 Q. Just a blue car?

2 A. Yeah.

3 Q. When that car came, were the other two cars  
4 still there?

5 A. What do you mean the other two?

6 Q. The Ford or the Expedition.

7 A. And the Escalade?

8 Q. The Escalade.

9 A. Yes.

10 Q. They were still there?

11 A. Yeah.

12 Q. Okay. They had not left?

13 A. They had not left.

14 Q. And this conversation, did the black people  
15 hear what he was saying to you?

16 A. No, because we're next door from Food City.

17 Q. Okay. And did you get out of your car?

18 A. Yes. I walked -- I was going inside Food City  
19 because I had to use the restroom.

20 Q. And did you go over to the cars, where the  
21 black people were?

22 A. No, I went -- I was going inside of Food City,  
23 and then I saw him, so I walked up to him, like,  
24 "Hey, what's up?" to him.

25 Q. Your brother-in-law?

1 A. No. Seco's brother-in-law.

2 Q. That's what I'm asking. Seco's brother-in-  
3 law.

4 A. Yeah.

5 Q. Okay. And that's when you got told somebody  
6 got caught?

7 A. Yes. He told me.

8 Q. But that wasn't anywhere near where the black  
9 people were?

10 A. No.

11 Q. Okay. And you weren't able to see the black  
12 people, whether they heard anything; right?

13 A. No.

14 Q. And then you wind up at a Circle K?

15 A. Uh-huh.

16 Q. And you were there for how long?

17 A. Say 20 minutes, because I was scared.

18 Q. Because you were scared?

19 A. Yeah, because they caught my brother-in-law,  
20 and I didn't have a license or nothing.

21 Q. And you were by yourself?

22 A. Yes.

23 Q. And how close were you to the black people at  
24 that point?

25 A. I was in -- they walked up to me.

1 Q. Who walked up to you?

2 A. I don't know their names.

3 Q. Well, were they the same people you saw in  
4 Phoenix?

5 A. Yes. They were the ones from the Escalade and  
6 the Expedition.

7 Q. All -- how many people walked up to you?

8 A. Like four or five.

9 Q. And this is all the people that were in the  
10 car?

11 A. No. There were more in there.

12 Q. Well, I asked you, were some of those people  
13 the people you saw in Phoenix?

14 A. Yes. Yes.

15 Q. How many?

16 A. Well, I saw one of them that was next to my  
17 door. I saw him in Phoenix. I don't know his name  
18 either.

19 Q. So just one?

20 A. Yeah, but there was more than one that walked  
21 in, walked --

22 Q. I understand that. All I'm asking you is, of  
23 the people you saw in Phoenix, you saw one of them  
24 at the Circle K?

25 A. Yeah, because I couldn't really see them in

1 Phoenix because of the tint of the cars.

2 Q. Okay. But you saw people outside the home in  
3 Phoenix; right?

4 A. Yes, but not all of them walked up to me, just  
5 two or -- just four or five walked up to me, not  
6 all of them.

7 Q. Well, were the people outside the home part of  
8 that group that came up to you at the Circle K?

9 A. Yes, they were part of it.

10 Q. How many? One?

11 A. Well, they were all in the Escalade and the  
12 Expedition, all of them. Like, they were all  
13 related or together.

14 Q. They were all related?

15 A. Like, together. The Escalade and the  
16 Expedition, they were all together.

17 Q. But listen to my question.

18 You say you saw either two or three people in  
19 Phoenix before you even left.

20 A. Uh-huh.

21 Q. What I'm asking is, at the Circle K, did you  
22 see any of them come up to your car?

23 A. Yes.

24 Q. One of them; right?

25 A. No. They -- like, four of them walked up to

1 my car.

2 THE COURT: You're misunderstanding his  
3 question. You said you saw two or three guys in  
4 Phoenix.

5 THE WITNESS: Yes.

6 THE COURT: He's asking you, of those two  
7 or three guys you saw in Phoenix, how many of those  
8 guys came up to the car at the Circle K in Tucson?

9 THE WITNESS: Oh, one of them.

10 BY MR. COOPER:

11 Q. And what did he look like?

12 A. He had short hair. He wasn't that dark. He  
13 had, like, a fade.

14 Q. And then you left the Circle K; right?

15 A. Yes. Right.

16 Q. And you never saw these black people again;  
17 right?

18 A. Right.

19 Q. And then sometime in February of 2012, you  
20 were shown pictures by an FBI agent?

21 A. Yeah.

22 Q. And you got arrested on February 8th of 2012;  
23 right?

24 A. Right.

25 Q. And when was it that you were shown pictures

1 by the FBI agent?

2 A. The same day I got arrested.

3 Q. That would be on February 8th of 2012?

4 A. Yes.

5 Q. Okay. So he came to see you at the jail?

6 A. Yes.

7 Q. Is that right?

8 A. Yes.

9 Q. And that would be this man sitting here, Agent  
10 Edwards?

11 A. Yes.

12 Q. And that's when he showed you the pictures?

13 A. Yes.

14 Q. In the jail?

15 A. Yeah. No, it was not in the jail. He took me  
16 out of the jail to show me, like, from the  
17 pictures, if that was me.

18 Q. How many pictures did he show you?

19 A. He showed me a couple of them.

20 Q. Two?

21 A. I don't know. A couple of them. I don't -- I  
22 didn't count them.

23 Q. You didn't count them?

24 A. No.

25 Q. And were they single pictures of individual

1 people?

2 A. Yes.

3 Q. There wasn't, like -- do you know what a line-  
4 up is, six people in a line-up, like that? Nothing  
5 like that?

6 A. I don't remember if it was a line-up. I don't  
7 know.

8 Q. So it might have been a six person line-up?

9 A. I don't remember.

10 Q. And when he showed you these, did he tell you  
11 why he was showing you these pictures?

12 A. Yes, because I was involved in that, and they  
13 knew I was involved in it, and who did I know. And  
14 I told them yes, and my brother-in-law and I was  
15 involved in it.

16 "Were you involved in it"?

17 "Yes," I told them.

18 Q. Okay. And -- but you were never arrested;  
19 right?

20 A. No.

21 Q. Okay. What else did he tell you?

22 A. If that was me, the one that was driving the  
23 white Liberty. I'm like yes, it's me.

24 Q. And that's -- he told you that, in February  
25 2012, he asked you if you were driving the white



1 Liberty?

2 A. Yes, and I told him yes.

3 Q. Okay. And at that point, did you look at  
4 these pictures and tell him who these people are?

5 A. Yes. I told him I recognize a couple of them,  
6 like, from there.

7 Q. From where?

8 A. From, like, from Seco and my brother-in-law, I  
9 recognized them, because -- you know. But from  
10 Phoenix, I -- like, from that house, I recognized a  
11 couple of them too.

12 THE COURT: We're going to have to stop.

13 MR. COOPER: Okay.

14 THE COURT: 9:15.

15 MR. COOPER: Okay. Thank you.

16 THE COURT: 9:15 tomorrow.

17 (Proceedings concluded in this matter.)  
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## C E R T I F I C A T E

I, Erica R. Grund, do hereby certify that I took the machine shorthand notes in the foregoing matter; that the same was transcribed via computer-aided transcription; that the preceding pages of typewritten matter are a true, correct, and complete transcription of those proceedings ordered, to the best of my skill and ability.

Dated this 2nd day of January, 2013.

s/Erica R. Grund  
Erica R. Grund, RDR, CRR  
Official Court Reporter